

No. 17314 ✓

United States
Court of Appeals
for the Ninth Circuit

M & R INVESTMENT COMPANY, INC., D/B/A
THE DUNES HOTEL AND CASINO,

Petitioner,

vs.

CIVIL AERONAUTICS BOARD.

Respondent.

Transcript of Record

In Three Volumes

FILED

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Volume II

(Pages 109 to 322) FRANK H. SCHMID, CLERK

Petition to Review an Order of the Civil Aeronautics Board.

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Petition to Review an Order of the Civil Aeronautics Board.

Before the Civil Aeronautics Board
Washington, D. C.

Docket No. 10606

In the Matter of

M & R INVESTMENT COMPANY, INC., d/b/a
DUNES HOTEL AND CASINO,

and

FRED MILLER, DON RICH, MARVIN COLE,
HARRY RIGGS, GRIMLEY ENGINEER-
ING, INC., d/b/a TRANS-GLOBAL AIR-
LINES,

and

CATALINA AIR TRANSPORT d/b/a CATA-
LINA AIRLINES

ANSWER OF RESPONDENT

Trans-Global Airlines, Inc., d/b/a Golden State
Airlines

Answering the Complaint of the Compliance at-
torney, Trans-Global Airlines, Inc., d/b/a Golden
State Airlines (Respondent) sued herein as Fred
Miller, Don Rich, Marvin Cole, Harry Riggs, Grim-
ley Engineering, Inc., d/b/a Trans-Global Airlines
and d/b/a Golden State Airlines, answering for it-
self alone, admits, denies and alleges as follows:

I.

Answering Paragraph 1, Respondent alleges that

it does not have sufficient information or belief to answer the allegations contained therein, and placing its denial on that ground, denies generally and specifically each and every allegation contained therein.

II.

Answering Paragraph 2, Respondent admits that Fred Miller, Don Rich, Marvin Cole and Harry Riggs are citizens of the United States and residents of the state of California. Except as expressly admitted herein, Respondent denies each and every allegation contained therein.

III.

Answering Paragraph 3, Respondent admits that the Grimley Engineering, Inc., is a citizen of the United States and is a corporation organized and existing under the laws of the state of California. Except as expressly admitted herein, Respondent denies generally and specifically each and every allegation contained therein.

IV.

Answering Paragraph 4, Respondent denies generally and specifically each and every allegation contained therein.

V.

Answering Paragraph 5, Respondent admits the allegations contained therein.

VI.

Answering Paragraph 6, Respondent alleges that it does not have sufficient information or belief to

answer the allegations contained therein, and placing its denial on that ground, denies generally and specifically each and every allegation contained therein.

VII.

Answering Paragraph 7, Respondent alleges that it does not have sufficient information or belief to answer the allegations contained therein, and placing its denial on that ground, denies generally and specifically each and every allegation contained therein.

VIII.

Answering Paragraph 8, Respondent denies generally and specifically each and every allegation contained therein.

IX.

Answering Paragraph 9, Respondent denies generally and specifically each and every allegation contained therein.

X.

Answering Paragraph 10, Respondent alleges that it does not have sufficient information or belief to answer the allegations contained therein, and placing its denial on that ground, denies generally and specifically each and every allegation contained therein.

XI.

Answering Paragraph 11, Respondent alleges that it does not have sufficient information or belief to answer the allegations contained therein,

and placing its denial on that ground, denies generally and specifically each and every allegation contained therein.

And further answering the Complaint, Respondent relies on any and all legal defenses which may be and become available to it, including but not limited to the following:

XII.

The Office of Compliance has failed to comply with the mandatory provisions of Section 5(b) of the Administrative Procedure Act, 5 U.S.C. Section 1004(b). This section provides that the Board must afford Respondent an opportunity for “* * * the submission and consideration of facts, arguments, offers of settlement, and proposals of adjustment * * *,” before the institution of a formal enforcement proceeding. The facts do not bring this action within the exceptions contained in this section of the Administrative Procedure Act with regard to time, the nature of the proceeding and the public interest; nor have facts been pleaded to bring this case within the aforesaid exceptions. The Board must dismiss this proceeding because of the failure of the Office of Compliance to comply with Section 5(b) of the Administrative Procedure Act.

Wherefore, Respondent prays that the Complaint herein be dismissed and for such other and further relief as the Board may deem just and proper.

Respectfully submitted,

TRANS-GLOBAL AIRLINES, INC., d/b/a
GOLDEN STATE AIRLINES,

By FRED MILLER.

Duly verified.

Certificate of service of copy attached.

Received July 20, 1959.

[Title of Board and Cause.]

ORDER DENYING MOTIONS

This proceeding was instituted on June 15, 1959, by the filing of a petition for enforcement by the Chief of the Office of Compliance, with a verified complaint attached, filed by a Compliance Attorney, which requested that the Board (1) order the M & R Investment Company, Inc., its agents, successors, and assigns to cease and desist from engaging in air transportation as such transportation is defined by Section 101 of the Federal Aviation Act of 1958, (2) order the Respondents Fred Miller, Don Rich, Marvin Cole, Harry Riggs, and the Grimley Engineering, Inc., and their agents, successors, and assigns to cease and desist from engaging in air transportation as defined by Section 101 of said Act, (3) order Catalina Air Transport, its agents, successors, and assigns to cease and desist from engaging in air transportation as defined

by Section 101 of said Act, and (4) grant such other and further relief as the Board may deem proper.

Answers to the petition and complaint and motions to dismiss the complaint were filed by Respondents M & R Investment Company and Catalina Air Transport on July 20, 1959. The motion of Catalina Air Transport requests the Board to dismiss the complaint. The motion of M & R Investment Company requests the Board to (1) dismiss the complaint and petition for enforcement, or (2) require the Office of Compliance to state a cause of action under the Federal Aviation Act, and (3) award such other and further relief as the Board deems just and proper. Answers to both motions were filed by the Compliance Attorney on August 27, 1959.

The Board, having fully considered the petition and complaint, the answers of Respondents thereto, and the motions and answers thereto, finds:

(1) That Respondent M & R Investment Company's protest of Rule 18(g) of the Board's Rules of Practice is without merit;

(2) The Respondents M & R Investment Company and Catalina Air Transport's contentions with respect to not being afforded opportunities for settlement have been answered by the Board previously in the proceeding *Hacienda Hotels-Motels, etc.*, Docket No. 8462, decided February 19, 1958 (Order No. E-12192), and are without merit;

(3) That the complaint filed in this proceeding alleges that the violations charged against the Respondents are of a repeated and continuing nature and as such requires the Board in the discharge of its duties and responsibilities to take whatever immediate action may be appropriate to compel compliance by the Respondents with lawful requirements, and the public interest in law enforcement requires a prompt determination of the issues raised by the aforesaid petition for enforcement and complaint;

(4) That the complaint is sufficiently specific and definitive in stating a cause of action to meet the statutory requirements of the Federal Aviation Act of 1958.

It Is Therefore Ordered:

(1) That the motions of the Respondents be and they are hereby denied in their entirety.

(2) That the complaint be set down for hearing before an Examiner of the Board at a time and place to be hereinafter designated.

By the Civil Aeronautics Board:

[Seal] /s/ MABEL McCART,
Acting Secretary.

Proof of service acknowledged.

United States of America
Civil Aeronautics Board, Washington, D. C.

Docket No. 10606

In the Matter of:

M & R INVESTMENT CASE

Washington, D. C., Tuesday, December 1, 1959

The above-entitled matter came on for hearing,
pursuant to notice, at 10 o'clock a.m.

Before: R. A. Walsh, Examiner.

Appearances:

MICHAEL H. BADER,
Representing Catalina Air Transport,
d/b/a Catalina Airlines.

ROLAND E. GINSBURG, of
KEATINGE & OLDER,
Representing M & R Investment Company,
Trans-Global Airlines.

THEODORE I. SEAMON,
Representing Pacific Air Lines, Inc.

RALSTON O. HAWKINS,
Representing Bonanza Air [49*] Lines,
Inc.

ALBERT F. GRISARD,
Representing Bonanza Air Lines, Inc.

WILLIAM E. McCOLLAM,
Office of Compliance, Civil Aeronautics
Board. [50]

* * *

Mr. Ginsburg: At this time I would like to file a motion or I will make a motion to strike paragraphs 6 and 8 of the complaint insofar as they assert violations prior to January 1, 1959, of the Federal Aviation Act for the very obvious reason, your Honor, the Federal Aviation Act, at least the sections which respondent was charged with violating, was not in effect at that time.

Therefore, it would be impossible for the respondents to violate that act. As I understand it, and I reviewed the pleading carefully, we are charged only with violating the Federal Aviation Act of 1958, Section 4(1), of which became effective January 1, 1959; it is my understanding.

If I am wrong in my contention that only a violation of the Federal Aviation Act of 1958 is asserted in the complaint, well, I would like to hear a statement from the Office of [59] Compliance, if I am.

* * *

Examiner Walsh: Would you like to reply to the last motion, Mr. McCollam?

Mr. McCollam: I would like to say this with respect to [60] the M & R Investment Company's opportunity to be afforded an opportunity to settle this matter: In our answer to the various motions

filed by the respondents, we said that the Office of Compliance would carefully consider any offer submitted by the respondents. I am not aware of any offer made by the M & R Investment Company or the Trans-Global or the Golden State or the members of that corporation or rather, partnership; Miller, Rich, Cole, Riggs or Grimley Engineering Company. Until there is something offered there isn't very much we can do about it.

Now, with respect to paragraphs 6 and 8, having to do with whether or not the Acts prior to January 1, 1959, constitute a violation of the Federal Aviation Act of 1958 and Mr. Bader's motion against paragraphs 10 and 11, we fully discussed this particular objection in the Hacienda Case. I don't have that particular file with me. [61]

The Act, itself, has a savings clause in it. The complaint certainly is broad enough to cover the violations, and we feel that the violations prior to January 1, 1959, constitute violation of the Federal Aviation Act for 1958.

* * *

Mr. Ginsburg: There is one matter, your Honor, that I am not clear on and that is whether the Office of Compliance contends that all the violations are charged under the Federal Aviation Act of 1958. I raised that matter, I would like a ruling on it or statement on it.

* * *

Examiner Walsh: While addressing myself to the motions, all of the motions are denied.

Respondents have had a continuing privilege of filing [62] whatever offers of settlement that they might wish to have filed. They still have a continuing privilege to file offers of settlement, but there is nothing, to my knowledge, about an offer of settlement that can serve to disrupt or delay the orderly process of the hearing. You may make those offers at any time.

The motions to strike paragraphs 7 and 8 of the complaint are denied, and the motions to strike paragraphs 10 and 11 are denied.

Insofar as the last motion is concerned, I know of no cessation or interruption of the statutory authority in the Board, either under the Civil Aeronautics Act of 1938, as amended, or the Federal Aviation Act of 1958. Nothing has been shown to me, at least, that there has been such an interruption of authority in the Board. Therefore, that motion is denied.

Mr. Ginsburg: Mr. Examiner, I would like the record to show at this time that the respondents that I represent hereby offer to sit down and negotiate the settlement with the Office of Compliance; that we are willing to make any change in the operation, which would be sufficient to the view of the Office of Compliance to remove any question that the respondents may be violating Section 410(a) of the Act, in transporting their own guests. I make that offer most seriously at this time. I would like the record to show that.

Mr. McCollam: On behalf of the Office of Compliance, I [63] will say this: that we will certainly

listen to any offer of settlement that the respondents represented by Mr. Ginsburg have to make. We don't feel that it is up to us to figure out some way to make their operations legal. If they can, well and good.

Examiner Walsh: I assumed that the gist of your motion was to delay the hearing, pending the submission of offers of settlement and negotiations with the Board.

As I indicated previously, the Board is not required to suspend or interrupt its hearing in that respect, except at the discretion of the Examiner or the Board, for the purposes of considering offers of settlement and negotiations. Accordingly, that motion is denied.

Mr. Ginsburg: I would like the record to show, your Honor, that——

Examiner Walsh: You may have continuing objections.

Mr. Ginsburg: If your Honor please, to clarify the record, my motion did not presuppose that there would be any delay of this hearing.

Examiner Walsh: Very well. [64]

* * *

JOSEPH W. STOUT

was called as a witness and, having been first duly sworn, was examined and testified as follows: [66]

* * *

Direct Examination

By Mr. McCollam:

Q. Will you state your occupation, Mr. Stout?

A. I am Chief of the Investigation Division of the Civil Aeronautics Board.

Q. How long have you been employed by the Civil Aeronautics Board?

A. Since September, 1948.

Q. All right, sir. Did you have an occasion to investigate the operations of the Dunes Hotel and Trans-Global Airlines? A. I did. [67]

* * *

Q. In the course of the investigation, where did you begin, Mr. Stout? A. In Los Angeles.

Q. And when did you begin the investigation?

A. September 1, 1958. [73]

Q. And what did you do?

Mr. Ginsburg: Mr. Examiner, I am going to move to object to these questions and move to strike the answers as to the date.

Examiner Walsh: I will overrule the objection. You may have a continuing objection.

Mr. Ginsburg: My objection is that those events occurred before the passage of the Federal Aviation Act, and therefore cannot be considered in this

(Testimony of Joseph W. Stout.)

proceeding, and therefore are not competent and relevant evidence.

Examiner Walsh: I think the record is clear.

Mr. Ginsburg: Thank you. I won't have to make this objection each time the testimony comes up concerning that period?

Examiner Walsh: That is right.

Mr. Ginsburg: Thank you.

Q. (By Mr. McCollam): What did you do?

A. I first obtained a copy of an advertisement of the Dunes Hotel, appearing in the 1958 edition of the Los Angeles classified telephone directory.

Mr. McCollam: Mr. Examiner, I would like to have this document marked for examination "OCA-1."

(Whereupon the document referred to was marked for identification as "OCA-1.") [74]

Q. (By Mr. McCollam): I show you what has been marked for identification as "OCA-1."

I ask you if you can identify that?

A. Yes, this is a photographic copy of the telephone directory advertisement that I referred to.

Q. All right. What does it show the telephone number of the Dunes as?

Mr. Ginsburg: I object, your Honor. The document speaks for itself.

Examiner Walsh: Overruled.

The Witness: It shows the telephone number as Bradshaw 2-7978, or Orlander 5-6077.

Examiner Walsh: Off the record.

(Testimony of Joseph W. Stout.)

(Discussion off the record.)

Examiner Walsh: On the record.

Q. (By Mr. McCollam): After you consulted the classified directory, Mr. Stout, what did you do?

A. Well, on this same day, September 1, 1958, at eleven o'clock a.m., I called this advertised number, Bradshaw 2-7978.

Q. And what response, if any, did you receive?

A. Well, I made this call for information——

Mr. Ginsburg: I object. Not responsive, your Honor. He asked what information he received, I believe. [75]

Examiner Walsh: Read the question.

(Question read.)

Examiner Walsh: Do you have the question, Mr. Stout?

Mr. McCollam: I will strike the question.

Q. (By Mr. McCollam): When you made the 'phone call, did anybody answer the 'phone?

A. The telephone was answered as "Dunes Hotel."

Q. Did you say anything?

A. I did. I mentioned that I was interested in a double-occupancy room at the Dunes Hotel around September 10 or 11, and I inquired about the rates, and during the course of the conversation—— [76]

(Testimony of Joseph W. Stout.)

Q. All right. What were those conversations that you had with this lady at the Dunes Hotel on the 'phone? Did you ask her about any rooms?

A. I did. I asked about the double occupancy rooms for September 10th and 11th, and about the rates, and she informed me that the rates ran from \$10 to \$16, and then I brought up this item that I referred to previously, where I had seen that guests of the hotel could fly free to Las Vegas, and I was informed by this person that only if the person purchased a tour—— [83]

* * *

Examiner Walsh: Have you finished your answer, Mr. Stout?

The Witness: No, sir. This person continued that this package deal was available at the rate of \$36.95 per person in a double-occupancy room, and she mentioned that this package deal included a meal and show and some other features.

I then said that I was not sure that I would be able to take advantage of those other features because the plans were indefinite in Las Vegas. They wanted to know if I just—I am sorry—then I wanted to know if I just made reservations for the room, would I be permitted to fly free to Las Vegas?

Mr. Ginsburg: I object to this as not being the conversation.

Mr. McCollam: Mr. Examiner, we have gone through enough of this.

(Testimony of Joseph W. Stout.)

Examiner Walsh: Overruled.

The Witness: Then this person on the other end of the line said, if she could have my name, she would call back. I said that I could not give her my telephone number where I could be reached. I pursued this question, again, and asked if I made reservations at the Dunes for the room only, would I be permitted to fly free to Las Vegas in the Dunes plane? [85]

* * *

Examiner Walsh: What did the woman tell you with respect to the free transportation, Mr. Stout?

The Witness: She told me that I would have to buy the package deal at the hotel at the price of \$36.95 per person.

Examiner Walsh: Very well.

The Witness: I continued the conversation and mentioned that the—well, that wouldn't be much more than the straight airline fare and the woman said, "That's correct." [87]

* * *

Q. (By Mr. McCollam): Did you during the course of this conversation ask the person to whom you were talking what airline flew these flights for Dunes? A. Yes.

Mr. Ginsburg: Just a minute. I object. The question is leading.

Examiner Walsh: Read the question.

(Question read.)

(Testimony of Joseph W. Stout.)

Examiner Walsh: Overruled. You may answer.

The Witness: I asked the of the airline and was informed that it was Trans-Global [88] Airlines.

* * *

Q. (By Mr. McCollam): Will you put your report aside, Mr. Stout? A. Yes, sir.

Q. Did you have occasion to call any travel bureau in Hollywood with respect to the Dunes' flight? A. Yes.

Q. Will you tell us when you made such a call?

A. It was on September 2, 1958. I made a telephone call to the Hollywood Knickerbocker Travel Service.

Q. Where is that?

A. That is located in the heart of Hollywood; Knickerbocker Hotel at 1714 Ivar Street, Hollywood, California.

Q. Did you talk to anybody in that Travel Agency?

A. Yes, I did. I talked to Miss Ann Schlossman.

Q. And what did she tell you?

A. Well, I inquired about——

Mr. Ginsburg: I object. It is not responsive.

Examiner Walsh: Overruled.

The Witness: In response to my inquiry about flights to Las Vegas from the Dunes Hotel, Miss Schlossman informed that flights were available at a price of \$22.95.

Q. (By Mr. McCollam): Did she make a reservation for you? [86] A. She did.

(Testimony of Joseph W. Stout.)

Q. Did you, at a later time, have a personal conversation I say "conversation," not over the telephone?

A. Yes. On the afternoon of September 2, 1958, I went to the Hollywood Knickerbocker Travel Office and talked with Miss Schlossman in person.

Q. Did you ask here about your reservation?

A. Yes, I did, and at that time I purchased, a—

Mr. Ginsburg: Objection. Not responsive?

Examiner Walsh: Read the question.

(Question and answer read.)

Q. (By Mr. McCollam): Did you actually purchase this package tour? A. I did.

Q. Did you receive a receipt?

A. I did. I received a handwritten receipt from Miss Schlossman for the money that I paid for the Dunes reservation.

(Exhibit OCA-5, was marked for identification.)

Q. I show you what has been marked for identification as OCA-5, which is a photograph. Can you tell me what that is a photograph of?

A. This is a photograph of the handwritten receipt that I obtained from Miss Schlossman.

Q. You did not receive any ticket from Miss Schlossman, [87] is that correct?

Mr. Ginsburg: I am going to object. That is a leading question.

(Testimony of Joseph W. Stout.)

Q. (By Mr. McCollam): All right. Did you receive a ticket from——

Mr. Ginsburg: Same thing.

Examiner Walsh: Read the question.

(Question read.)

Q. (By Mr. McCollam): Did you ask for a ticket?

A. I did, but I was told by Miss Schlossman——

Mr. Ginsburg: That is the extent of the answer that is required.

Examiner Walsh: The answer is “yes.” Frame your next questions.

Q. (By Mr. McCollam): What did Miss Schlossman tell you?

A. She told me that the Dunes Hotel did not give the travel agency's tickets. That the arrangements were to issue a receipt when the money is paid for the Dunes' Tour and that that receipt would be valid for the Dunes trip.

Q. When you purchased your ticket—I mean, how much money did you give Miss Schlossman?

A. \$22.95.

Q. Did that include a room? [88]

Mr. Ginsburg: I object to the form of this question, your Honor. Why doesn't he ask what it included, rather than leading him?

Examiner Walsh: Rephrase your question, Mr. McCollam. Ask him what the \$22.95 included.

(Testimony of Joseph W. Stout.)

Q. (By Mr. McCollam): What did the \$22.95 include, Mr. Stout?

A. That was for the price of the Dunes' Magic Carpet Tour, which included the flight to Las Vegas and return, plus certain other features of the tour, but not including hotel accommodations at the Dunes. [99]

* * *

Q. During your previous telephone conversations with Miss Schlossman of the Knickerbocker Travel, what inquiry, did you make, if any, of the tour?

A. Well, I had asked about the type of airplane that would be operated and at that time Miss Schlossman said she did not know. However, when I later went to the office——

Mr. Ginsburg: Objection. He is talking only about the telephone conversation now.

Mr. McCollam: No——

Mr. Ginsburg: May we have the question read back?

Examiner Walsh: Read the question, Miss Arms.

(Question read.)

Examiner Walsh: Overruled.

Mr. Ginsburg: Your Honor, please——

Examiner Walsh: Overruled.

Mr. Ginsburg: ——is limited to the telephone conversation.

The Witness: As I say, Miss Schlossman in-

(Testimony of Joseph W. Stout.)

formed me of the name of the type of plane used on the Dunes flight, when I inquired about this during the telephone call. When I later visited the Hollywood Knickerbocker Travel Office, Miss Schlossman told me that she had found out the type of plane and said it would be a C-46.

At that time I asked if I would be required to stay at the hotel, the Dunes Hotel, and she said that I would not and she added that the price of the Dunes Magic Carpet Tour, which I [100] purchased, covering the air trip to Las Vegas, was actually less than the round trip air coach fare which she quoted as \$33.15.

Q. (By Mr. McCollam): Did there come a time when you took the trip on the Dunes?

A. Yes.

Q. Will you tell us where you checked in and when you checked in?

A. I checked in at the Dunes ticket counter at the Lockheed Air Terminal, Burbank, California, at approximately six forty-five p.m. on September 3d, 1959.

Q. Did you say that you took the trip on September 3, 1959?

Mr. Ginsburg: I object to that question.

The Witness: No. If I did——

Mr. Ginsburg: Just a moment. I have an objection, sir. This question has been asked and answered. He can have it read back, if he wants to.

Examiner Walsh: Will you find Mr. Stout's answer to that question?

(Testimony of Joseph W. Stout.)

(Answer read.)

Examiner Walsh: Is that a correct answer?

The Witness: That is an obvious mistake. I well recall it was September 3, 1958. [101]

Mr. Ginsburg: I didn't even realize that you said '59. There is no problem about that.

Examiner Walsh: Correct the record.

Mr. Ginsburg: He can change the record to 1958, if he wants to.

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

(Documents referred to were marked for identification as "OCA"-6 to "OCA"-10, inclusive.)

Q. (By Mr. McCollam): I show you, Mr. Stout, photographs which have been marked for identification as "OCAA"-6, "OCAA"-7, "OCCA"-8, "OCCA"-9, and "OCCA"-10.

Mr. Ginsburg: Is that the way you want it? You have two "a's," double "a."

Mr. McCollam: Have I been saying "AA"?

Mr. Ginsburg: Yes.

Examiner Walsh: Just make it one "A."

Q. (By Mr. McCollam): I ask you if you can identify those, Mr. Stout? A. Yes.

Q. What are they photographs of, Mr. Stout?

A. Photographs of the tickets and gateways which were re-issued to me in exchange for the receipt I had previously [102] obtained from the Hollywood Knickerbocker Travel Service.

(Testimony of Joseph W. Stout.)

Those copies of the tickets and gate passes that were issued by the Dunes ticket office at Burbank, Lockheed Air Terminal—— [103]

* * *

Q. The original documents from which those photographs were taken, do you have those in your possession, sir, or in the possession of this office?

A. I believe the Office of Compliance has them, yes. That is, with the exception of certain of the coupons that were removed from OCA-9.

Q. Who removed these coupons from the booklet?

Mr. Ginsburg: Objection. There is no objection that anything has been removed. I object to the question.

Examiner Walsh: Overruled.

The Witness: The limousine driver removed the one for limousine service.

Q. What exhibit are you looking at?

A. At "OCA"-9.

Q. Yes.

A. When I was transported from the airport in Las Vegas to the Dunes Hotel, and the other coupons that were removed were picked up by representatives of the Dunes Hotel, on the premises of the Dunes Hotel. [104]

* * *

Q. When you boarded the plane, did you notice any other people on the plane?

(Testimony of Joseph W. Stout.)

A. Yes. [107]

Q. Did the plane have a hostess on it?

A. Yes.

Q. Did the plane—in the interior of the plane, were other people seated in seats like you had?

A. Yes.

Q. Do you know whether or not any of those people used the same kind of boarding pass?

Mr. Ginsburg: I object. The questions are leading and call for a conclusion. There is no foundation. Let him state what happened.

Examiner Walsh: Well, I will sustain the objection, but subject to the qualification of my questioning the witness.

Do you know whether any of the other persons aboard the aircraft, to your own personal knowledge do you know, whether they had a boarding pass similar to the one that you had received?

The Witness: I didn't examine any such boarding passes in detail, no.

Q. (By Mr. McCollam): Describe the procedure that you went through, Mr. Stout, in boarding the plane.

A. Well, of course, after I had checked in at the Dunes ticket counter and received the re-issued ticket and the gate pass, shortly before I boarded I heard an announcement——

Mr. Ginsburg: I object. None of this is responsive. It is [108] boarded the aircraft that the question is directed to.

Mr. McCollam: I submit this is responsive.

(Testimony of Joseph W. Stout.)

Examiner Walsh: Read the question.

(Question read.)

Examiner Walsh: Is that preliminary to your answer?

The Witness: Yes, it is all part of the observations.

Examiner Walsh: Very well, proceed.

Objection overruled.

Mr. Ginsburg: The record shows my objection.

The Witness: I heard an announcement over the public address system in the Lockheed Air Terminal, directing the passengers for Las Vegas to board the Dunes flight No. 711. I then proceeded to the gate and before boarding the aircraft, which was identified as "Dunes Hotel," I showed my gate pass to one of the attendants, and I observed other passengers doing likewise. [109]

* * *

Q. (By Mr. McCollam): I show you what has been marked for identification as "OCA-5-A" and ask you if you can identify this material.

A. Yes. This is a piece of advertising material that I picked up at the Dunes ticket counter at the Lockheed air terminal at Burbank on September 3, 1958.

Q. You finally took the flight that day, isn't that correct? A. Yes.

Q. Where did the flight go?

A. To Las Vegas. [114]

(Testimony of Joseph W. Stout.)

Q. When the plane arrived at Las Vegas, what happened?

A. Well, there was an attendant that met the flight and instructed passengers who wished to go to the Dunes Hotel to board the waiting limousine.

Q. Will you describe this limousine?

A. Well, it is typical—a typical limousine—

Q. Please describe it.

Mr. Ginsburg: Objection.

Examiner Walsh: Overruled.

The Witness: It was a Tanner Motor Lines bus that is typical of the type used in ground service, transporting passengers between the city and city terminals and the airport.

Mr. Ginsburg: Objection, and move to strike. It is a characterization of the witness. He can describe what he saw. He doesn't have to tell what he thinks of it.

Examiner Walsh: Overruled.

Q. (By Mr. McCollam): Did you board the bus? A. I did.

Q. Where did you go?

A. To the Dunes Hotel.

Q. And what did you do there?

A. Well, I met Agent Hamilton there, and we got a room for us at the hotel. Then I continued my investigation [115] of the other features of the Dunes tour.

Q. Did there come a time when you talked to Major Riddle, president of the M & R Investment Company?

(Testimony of Joseph W. Stout.)

Mr. Ginsburg: Objection. There is no testimony—well, I think there is a verified answer. I will withdraw it. We will stipulate Mr. Riddle's presence.

Examiner Walsh: Show the objection is withdrawn.

The Witness: Yes, I talked to Major Riddle the following day, September 4, 1958.

Q. (By Mr. McCollam): Where was this?

A. At the Dunes Hotel in Las Vegas.

Q. Did you tell Mr. Riddle the purpose of your visit? A. Yes, I did.

Q. What did you say to him?

A. I told him that we had had inquiries concerning the Dunes flight operations, and wanted to talk to him to get first hand information and material on the operation, and he told me he would cooperate.

Q. Did Mr. Riddle tell you with what airlines he was operating? A. Yes.

Q. What airlines was it?

A. Trans-Global Airlines.

Q. Did he tell you how much he was paying for the use [116] of those airplanes?

* * *

A. Yes, \$675 a round trip, with a guarantee of a [117] minimum of twenty-five trips a month, regardless of how many passengers flew.

Q. Did he tell you who performed the ticketing functions? A. Yes, he did.

(Testimony of Joseph W. Stout.)

Q. And who performs those?

A. The employees of the Dunes Hotel.

Q. And what was the function of Trans-Globe?

A. Trans-Global merely—

Mr. Ginsburg: I object, unless this is related to the conversation.

The Witness: This is the substance of what he told me.

Examiner Walsh: Testify as to what he told you, Mr. Stout. Objection overruled.

The Witness: He told me that Trans-Global performed the mechanical operation of the aircraft and that the other services, such as reservations, ticketing, baggage weighing, et cetera, were performed by Dunes Hotel employes.

Q. Did he tell you who pays for the space and facilities used at the airport?

A. Yes, Dunes Hotel.

Q. Did you discuss with Mr.—did you ask Mr. Riddle what arrangements we had with travel agencies? A. Yes, yes.

Q. What did he tell you?

A. I asked him about the commission payments on tickets [118] sold by such agencies as Hollywood Knickerbocker Travel Service, and he stated that the Dunes paid the agents a commission on each such ticket sold.

Q. Did he tell you the purpose of those flights?

A. Yes. He said the purpose was to get as many persons into the Dunes as possible. He added that he contemplated using buses and train.

(Testimony of Joseph W. Stout.)

Q. Did Mr. Riddle tell you, say anything to you about whether or not the operation was operating at a profit and loss? A. Yes.

Q. What did he say?

A. He said that the operation was conducted at a loss of \$9,000 the last month, and \$17,000 the month prior to that.

Q. You are talking about the month prior to your conversation?

A. That is right, with reference to the time of my conversation.

Q. Did you question him concerning the cost allocation of the operation?

A. I did. I asked Mr. Riddle if he kept an accounting of the costs and revenues for the Dunes flights, and he stated that he did. I questioned him further about this, and he mentioned that——

Mr. Ginsburg: Objection. You should give the conversation. [119]

Examiner Walsh: Just tell us what he told you.

The Witness: Well, he said that he couldn't determine exactly what part of the monies paid by the passengers for the Dunes flight went to each particular item. For example, the chuck wagon buffet. However, he said that he had figured that the cost for the buffet was four dollars, and he assumed that the profit derived from the passengers by the casino would offset any losses incurred on other parts of the package tour. [120]

(Testimony of Joseph W. Stout.)

Q. Did you go back on a Dunes flight?

A. No, sir.

Q. I take it from exhibit—you have and you had—did there come a time when you returned to Los Angeles? A. Yes.

Q. And did you have your return ticket with you at that time? A. Yes. [121]

* * *

Q. What did you do with the tickets?

A. I went into the Dunes ticket counter at Lockheed Air Terminal, Burbank, September 4, 1958, where I talked with Mr. Chris Graham, representative of the Dunes, and asked him if I could obtain a refund—

Mr. Ginsburg: I object to that characterization of Mr. Graham. There is no foundation. [122]

The Witness: That is what I said.

Mr. Ginsburg: I move to strike it.

(Answer read.)

Examiner Walsh: Strike the portion, “representative of the Dunes.”

Tell us, who is Chris Graham?

The Witness: He was behind the ticket counter and told me he was a representative of the Dunes.

Examiner Walsh: Where?

The Witness: Lockheed Air Terminal, Burbank, California.

I asked him about getting a refund and he said he could not grant a refund on the return ticket, but I could have used the ticket later.

(Testimony of Joseph W. Stout.)

* * *

Cross-Examination

By Mr. Ginsburg: [123]

* * *

Q. Referring only to your investigation of the Dunes Hotel in September, 1958, prior to the time that you boarded the aircraft, did anyone whom you contacted concerning the trip to the Dunes Hotel ever speak to you about airline fares?

A. You mean airline fares to Las Vegas?

Q. To Las Vegas, yes. A. Yes.

Q. Who was that?

A. Well, in the conversation I had with the person on the call to the Dunes Hotel on September, 1958, I mentioned that the cost of the package tour seemed to be less than the airline fare itself, and this person I was talking with said that that was correct.

Q. You brought up the subject, is that right?

A. Yes, and then again——

Q. Did you compare that fare—strike that please. Did [135] you compare the cost of the tour with anything else, other than airline fares?

A. No. I made another comparison similar to that one when I talked to Miss Schlossman.

Q. Just on this first conversation, for the moment. This is on the Bradshaw number, is that correct? A. That is right.

(Testimony of Joseph W. Stout.)

Q. Did you compare the cost of the tour with anything other than the airline fare? A. No.

Q. When was the next mention of the airline fares made and by whom?

A. Miss Schlossman at the Hollywood Knickerbocker Travel Service.

Q. Was this over the 'phone, Mr. Stout or in person.

A. That was over the 'phone. I don't remember this morning whether I said that was in person or over the 'phone, but it actually was.

Q. You are certain it was over the 'phone?

A. Yes, over the 'phone during my telephone call to the Hollywood Knickerbocker Travel Service. I asked Miss Schlossman if I would be required to stay at the Dunes Hotel and she said it wasn't necessary and then she volunteered this information and said actually the cost of the air trip is less than the round trip coach air fare, which I believe, she quoted as \$33.15. [136]

Q. You had not mentioned the comparison prior to this? A. No, she volunteered that.

Q. When did Miss Schlossman mention, again, that you were not required to, as you say, stay at the Dunes Hotel?

A. I don't believe she mentioned that again.

Q. When did she mention it to you?

A. Well, I asked her if it was required.

Q. When?

A. When I called her on the telephone September 2, 1958. That is when I made the telephone

(Testimony of Joseph W. Stout.)

call to the hotel—Hollywood Knickerbocker Travel Service.

Q. She knew at that time, did she not, that you were not staying overnight, is that right?

A. No, she didn't know but what I might be making reservations to stay somewhere else in Las Vegas. I don't think she had any knowledge of that.

Q. Wasn't she selling you a ticket for \$22.95—a tour ticket? A. That is right.

Q. And you know, do you not, that the price is \$33.15 or something in excess of \$22.95, if you are staying overnight?

A. Yes, the price is more if you stay at the Dunes Hotel. If that is taken in as part of the Dunes Package Tour it would still be \$22.95, if I went over on the flight and stayed some [137] place other than the Dunes.

* * *

Q. Now, again referring to your investigation of the Dunes Hotel in September, 1958, prior to boarding the aircraft with a flight to Las Vegas, were you ever informed of the name of the air carrier who would operate the flight? A. Yes.

Q. And who informed you of that?

A. Well, the person at the Dunes Hotel number that I called September the first, 1958, stated the airline would be Trans-Global. [139]

Q. In a telephone conversation—strike that. Did you ever tell either Miss Schlossman or the person

(Testimony of Joseph W. Stout.)

at the Bradshaw number that you didn't think you would be able to take advantage of the features, other than the flight to Las Vegas?

A. I told the person that I called at the Dunes Hotel, the Bradshaw number, that I might not be able to take advantage of those features, yes. [156]

* * *

BERNARD B. BURNS

was called as a witness, and, having been first duly sworn, was examined and testified as follows: [161]

Direct Examination

By Mr. McCollam:

Q. Mr. Burns, will you state your full name and occupation for the record?

A. Bernard B. Burns, Special Agent, Office of Compliance, Civil Aeronautics Board.

Q. How long have you been employed by the Civil Aeronautics Board? A. Three years.

Q. Mr. Burns, did you have an occasion to make an investigation of the Dunes flights between Las Vegas—between Burbank and Las Vegas?

A. Yes. [162]

* * *

Q. Now, will you lay that report aside? Will you tell us approximately when you made your investigation of the Dunes flights?

A. On September 17, 1958.

Mr. Ginsburg: Excuse me. I am going to object

(Testimony of Bernard B. Burns.)

at this point, to an objection that I have raised before to any evidence prior to the adoption of the—of the effective date, I should say, of the National Aviation Act—the National Federal Aviation Act, which became effective January 1, 1959.

Examiner Walsh: Yes, you may have a continuing objection as to the testimony of all the witnesses.

Mr. Bader: May I join in that? [163]

Examiner Walsh: Yes.

Mr. McCollam: That is the understanding we have, anything prior to the Federal Aviation Act, you object to?

Mr. Ginsburg: Right.

Examiner Walsh: I think I stated previously that counsel for the respondents could have a continuing objection with respect to all the testimony of all witnesses for the Compliance Office relating to that period.

Q. (By Mr. McCollam): Did you go on the Dunes flight, Mr. Burns? A. Yes, I did.

Q. Will you tell us how you obtained your passage upon that flight? What steps you took to obtain passage on that flight?

A. Well, first, on September 17, 1958, I made a telephone call to the Boulevard Travel Service, inquiring into reservations on the Dunes flights.

Mr. Ginsburg: I am going to object on any testimony regarding this call. I move to strike what has been testified to on the grounds that it is hearsay.

(Testimony of Bernard B. Burns.)

Examiner Walsh: Objection overruled. You may answer.

Q. (By Mr. McCollam): What did you find out at the Boulevard Travel Service?

A. I was told, when I inquired into Dunes flights, I [164] was told that it did not represent the Dunes flights, and I should call the operator, the Dunes operator, itself, at the Bradshaw number, Bradshaw 2-7978.

Mr. Ginsburg: I now renew my motion to strike, Mr. Examiner. It is clearly hearsay. It is not the conversation of the respondents or the agent.

Mr. McCollam: I think the objection is valid. It has nothing to do with the case, and I will withdraw that particular bit of testimony.

Examiner Walsh: Very well.

Q. (By Mr. McCollam): Did you call the Bradshaw number? A. Yes, sir.

Mr. Ginsburg: We will stipulate that Bradshaw 2-7978 is the Dunes telephone number in Los Angeles.

Examiner Walsh: Very well. Continue your testimony from the point of the Bradshaw telephone number.

Q. (By Mr. McCollam): What happened when you called the Bradshaw number?

A. Well, the telephone was answered, Dunes Hotel, and I asked if there was any space on the evening flight, of that evening, September 17th, to Las Vegas, and I was told that there was space on this flight.

(Testimony of Bernard B. Burns.)

Q. Did you inquire as to the price of the tour?

A. Yes. I asked what the price was. [165]

Q. What did you find out?

A. It was quoted as \$22.95.

* * *

The Witness: Yes, I inquired what this \$22.95 consisted of, and I was told that that would cover the round trip air transportation between Burbank and Las Vegas, the limousine transportation from the Las Vegas airport to the Dunes Hotel, buffet dinner or supper at the Dunes Hotel, a bottle of champagne on the flight itself.

Q. (By Mr. McCollam): Did you purchase a ticket? A. Yes, sir.

Q. Where did you purchase the ticket and when did you purchase the ticket?

A. I purchased that ticket on September 17, 1958, at [166] the Burbank airport, the Dunes Hotel ticket counter. [167]

* * *

Q. Now, did there come a time when you went aboard that flight? A. Yes, sir.

Mr. Ginsburg: Objection. I don't know what flight we are talking about. Do you want to amend your question to say "that plane"?

Q. (By Mr. McCollam): Did you go aboard that plane, Mr. Burns? A. Yes, sir.

Q. When did you go aboard that plane?

(Testimony of Bernard B. Burns.)

A. Approximately 7:30 p.m. on September 18, 1958.

Q. Will you describe the boarding procedure? What you went through?

A. Well, shortly before 7:30 or around that time, an announcement was made over the loud speaker.

Q. What was the announcement?

A. That announcement was, "The Dunes Hotel Flight 711 for Las Vegas now boarding at Gate 6. All aboard, please."

(Document referred to as "OCA" 12-F was marked for identification.) [174]

* * *

Q. All right. Now, Mr. Burns, after the announcement, did you board the plane?

A. Yes, I did.

Q. And did you see anyone else on the plane?

A. Yes.

Q. Could you describe how many people you did see on the plane or tell us how many people you saw on the plane?

A. I couldn't tell you the exact number.

Q. Well, would you say that there were more than ten? A. Oh, yes.

Q. Would you say that there were less than— would you say more than 25? [175]

A. I would say there were more than 25.

Q. Where did the flight go, Mr. Burns?

(Testimony of Bernard B. Burns.)

A. To Las Vegas, Nevada.

Q. What time did you arrive there?

A. Approximately 8:15 or thereabouts.

Q. I see. A. That was p.m.

Q. What did you do after the plane landed?

A. I deplaned with the rest of the passengers from the plane.

Q. What did you do?

A. And I followed those passengers to a bus, Tanner Motor Tour bus.

Q. Do you know whether all the passengers went on the bus or not?

A. I don't know whether all of them went on.

Q. Do you know—did you see any who did not go on?

A. I don't recall seeing any that did not go on.

Q. Where did the bus take you?

A. To the Dunes Hotel, in Las Vegas.

Q. What did you do there, if anything?

A. At the hotel I went to the desk clerk and I inquired for Mr. Riddle.

Q. Were you able to see Mr. Riddle?

A. No, sir. [176]

Q. Did you make inquiries as to the whereabouts of anyone else?

A. Yes, I asked for Mr. Riddle's secretary, Mrs. O'Rourke, and I was informed that she wasn't in but that she would be in the following day at noon.

Q. Where did you stay, if any place, in Las Vegas?

(Testimony of Bernard B. Burns.)

A. I stayed overnight at the Beacon, the Beacon Inn Motel. [177]

* * *

Q. Mr. Burns, I show you what has been marked for identification as "OCA"-19. Did you take that picture, sir? A. Yes. [186]

Q. Where did you take this picture?

A. I took this picture in the Accounting Department of Dunes Hotel.

Q. Who furnished you with the document that you photographed there?

A. Mr. Dave Duran.

Q. Who is he?

A. He was at that time the accountant, chief accountant for the Dunes Hotel.

* * *

Q. Mr. Burns, prior to taking the photograph—where [187] did you take the photograph? Where did you take the photograph?

A. I took the photograph in the Accounting Department office.

Q. Of where? A. Of the Dunes Hotel.

Q. Now, before taking that photograph, did you consult with anybody in the Dunes Hotel?

A. Yes, I did.

Q. With whom did you consult or talk?

A. I consulted, first, with Mrs. O'Rourke.

Q. And do you know—did you know who Mrs. O'Rourke was or is, or was at that time?

(Testimony of Bernard B. Burns.)

A. Major Riddle's secretary.

Q. And what did she tell you?

A. She told me that the documents that I was to examine in the Dunes Hotel were available for my examination through Mr. Dave Duran, who had those records for me.

Q. I see. Now, what is this photograph that you have in your hand a photograph of?

A. This is a photograph of the aircraft charter contract between Trans-Global Airlines and the Dunes Hotel. [188]

* * *

Q. (By Mr. McCollam): Mr. Burns, I show you what has been marked for identification as "OCA"-20 through "OCA"-40. Did you take those photographs, Mr. Burns? A. Yes.

Q. Where did you take those photographs?

A. In the Accounting Department of the Dunes Hotel.

Q. Who furnished you the documents that those photographs depict? A. Mr. Dave Duran.

Q. That is the same Mr. Duran that you identified as the auditor or accountant of the Dunes, is that correct? A. That is correct.

Q. When were those documents photographed?

A. Those were photographed in the afternoon of September 18, 1958.

Q. And what did those documents relate to, Mr. Burns?

A. Those are accounting documents relating to

(Testimony of Bernard B. Burns.)

transactions between the Dunes Hotel and Trans-Global Airlines.

Q. Where did you obtain that information from, Mr. Burns? A. From Mr. Duran.

Q. Now, will you compare "OCA"-20 with "OCA"-21?

Mr. Ginsburg: Objection. Improper. All the witness can do is testify as to facts. His conclusions and judgments are [192] not admissible.

Examiner Walsh: Wait until the ruling is made. I am going to sustain the objection, and ask you to rephrase your question.

Q. (By Mr. McCollam): Will you look at "OCA"-20? A. Yes, sir.

Q. Will you tell us what that is?

A. This, I was informed, is the remittance invoice in the amount of \$2,700.

Q. From whom?

A. From the Dunes Hotel.

Q. To whom? A. Trans-Global Airlines.

Q. Will you look at "OCA"-21? How much was the amount of the remittance?

Mr. Ginsburg: I am going to have to object, your Honor. Those documents speak for themselves.

Examiner Walsh: Anticipating further questions on the same subject, I will overrule your objection and see what it is.

Q. (By Mr. McCollam): "OCA"-21 is in the amount of how much? A. \$2,700.

(Testimony of Bernard B. Burns.)

Q. Did you ask Mr. Duran about those documents? [193] A. Yes.

Q. What did he tell you?

A. He told me they represented payments. For example, "OCA"-21 represented payment from the Dunes to Trans-Global Airlines for \$2,700, which was the deposit that the Dunes gave Trans-Global at the inception, or according to the contract between Trans-Global and Dunes.

Q. I see. Now, "OCA"-23, 24, 25, 26, 27, 28, 29, 30 through -35, what did you understand those to be from?

* * *

The Witness: Those documents were given to me by Mr. Duran and according to him they represented payments from the Dunes Hotel to Trans-Global Airlines.

Q. (By Mr. McCollam): For whom?

A. For Dunes Hotel.

Q. What is "OCA"-36, Mr. Burns?

A. "OCA"-36 is an invoice from Golden State Airlines to Dunes Hotel.

Q. And what is -37? [194]

A. -37 is the payment, a copy of the payment from the Dunes Hotel to Golden State Airlines in the amount of \$675.

Q. And -38 and -39 are what?

A. Exhibit No. "OCA"-38 shows four checks representing payments from the Dunes to Trans-Global Airlines; and -39 is the reverse side of those checks, cancelled checks.

(Testimony of Bernard B. Burns.)

Q. And -40 is what?

A. -40 is a distribution ledger, Dunes Hotel, showing the account of Magic Carpet flight, and that represents the payments for the flights. [195]

* * *

Q. After obtaining those various exhibits that you have referred to in your testimony, did you have any further discussion with Mr. Duran?

A. Yes.

Q. What did he say?

A. The discussion we had was relative to——

Mr. Ginsburg: Objection. Not responsive. The question was, "What did he say?", meaning Mr. Duran.

Examiner Walsh: Will you answer in that posture, Mr. Burns?

The Witness: He stated that approximately 5200 passengers had been carried since the inception of the Dunes Tours, from [212] May 8th through, if I recall the date exactly, the end of August. I am not too sure of that date.

Examiner Walsh: That is '58, is it?

The Witness: 1958, sir. [213]

* * *

BERNARD B. BURNS

resumed the stand as a witness, and having been previously duly sworn, was examined and testified further as follows:

Cross-Examination

By Mr. Ginsburg: [221]

* * *

Q. How long did your investigation of the Dunes Hotel—what period of time, I beg your pardon, did your investigation take place?

A. September 17 and September 18, 1958.

Q. And that is the complete extent of your investigation of the Dunes Hotel, is that correct?

A. Yes, sir. [223]

* * *

Mr. Ginsburg: Mr. Examiner, I would like to object—my first objection and this is to all the exhibits—and that is that they were all taken, all relate to events which purportedly took place before the enactment of the Federal Aviation Act of [270] 1938.

* * *

CHARLES HERBERT LINEBERRY

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

Q. Will you state your full name for the record, Mr. Lineberry?

A. Charles Herbert Lineberry.

(Testimony of Charles Herbert Lineberry.)

Q. What is your occupation, sir?

A. Special Agent, Office of Compliance, Civil Aeronautics Board.

* * *

Q. Mr. Lineberry, did you have occasion to investigate Catalina Airlines? A. Yes, I did.

Q. In December of 1958? [286]

A. Yes.

Q. Could you tell us when and where you conducted that investigation?

Mr. Ginsburg: I would like the record to show, your Honor, my usual objection to events, testimony regarding events prior to January 1, 1959.

Examiner Walsh: Very well.

Mr. Ginsburg: Continuing the objection on that basis.

Mr. Bader: And mine, also, Mr. Examiner.

Examiner Walsh: Yes, that may be done. [287]

* * *

(Answer read.) [292]

* * *

You have examined the documents, have you, Mr. Lineberry?

The Witness: Yes.

Examiner Walsh: Proceed from there.

Q. (By Mr. McCollam): Did you take those photographs? A. Yes, I did.

(Testimony of Charles Herbert Lineberry.)

Q. And where did you take them?

A. At the Los Angeles International Airport on December 14, 1958.

Q. At what office, if any, did you take them?

A. Catalina's office, behind the ticket counter.

Q. Who gave them to you?

A. Mr. Dorfer.

Q. Did you have any discussion with Mr. Dorfer with respect to those documents that you have before you? A. Yes, I did. [294]

Q. And what did he tell you they were?

A. He informed me that they were ticket sales reports, and at the time that I examined them the Dunes Hotel tickets were attached to this——

Mr. Ginsburg: Objection.

Mr. Bader: Objection.

Mr. Ginsburg: Move to strike. Not the conversation. He asked you what did he tell you about the documents. I move to strike right now, your Honor.

Examiner Walsh: Let me ask the witness, did he use the term "tickets" or did he use some other designation?

The Witness: He used the words "tickets." [295]

* * *

The Witness: I asked Mr. Dorfer for this document, among others. When he gave these documents to me, he said that those were the Dunes' station agent's reports of ticket sales, and he [296] said that the tickets were attached to this report. [297]

* * *

(Testimony of Charles Herbert Lineberry.)

Q. (By Mr. McCollam): Did I understand you correctly that attached to each one of those station agent reports of ticket sales, there were four coupon receipts?

A. That was not the way it was told to me.

Q. What was told to you?

A. They were referred to me by Mr. Dorfer as tickets.

Q. All right. Answer the question. Were those four coupons—all I am asking, is did you take the picture of all of them or did you just take a picture of one of them that went on the thing?

A. I took an example from each group.

Q. That is right. So that with respect to Exhibits OCB-2 through -71, where these four coupons appear on the lower part of these sales, report of sales that you just took a picture of one of the coupons as a representative thing? Is that correct? [298]

A. Yes. [299]

* * *

Mr. McCollam: That is correct.

I wish to have marked for identification OCB-72 through OCB-121.

Examiner Walsh: They may be so marked.

(Documents referred to as OCB-72 through OCB-121 were marked for identification.)

Mr. Ginsburg: For the record, I would like to state that OCB-72 through -121 all purport to be documents entitled "Passenger Manifest, Catalina Pacific Airline."

(Testimony of Charles Herbert Lineberry.)

Q. (By Mr. McCollam): Mr. Lineberry, will you examine OCB-72 through OCB-121?

A. I have examined them.

Q. Did you photograph those documents, sir?

A. Yes, I did.

Q. Where and when did you photograph those documents?

A. December 14, 1958, at the office behind the Catalina ticket counter at Los Angeles International Airport.

Q. Where did you get those records to photograph, sir?

A. I requested them from Mr. Dorfer and he supplied them to me.

Q. Did you ascertain from Mr. Dorfer how those flight manifests are prepared? Did you find out from him? [300] A. Yes.

Q. And how were they, did he tell you?

A. He told me that the passengers on those flights, their names were furnished through the Dunes Hotel representative and that their name was put on the manifest, to go with the other information shown on the manifest regarding each individual passenger.

* * *

Q. What did Mr. Dorfer tell you about those with reference to the Dunes, if anything? [301]

* * *

(Testimony of Charles Herbert Lineberry.)

Examiner Walsh: I will ask counsel to rephrase his question. Listen closely, Mr. Lineberry.

Q. (By Mr. McCollam): I show you OCB-73 and call your attention—it says on that particular form “Type of Flight, Dunes.”

Did anyone tell you that those particular manifests relate to the Dunes flight? A. Yes.

Q. Who was that? A. Mr. Dorfer.

Q. When did he tell you that?

A. December 14, 1958.

Q. Now, is the same true with respect to all of those exhibits that relate to the flight manifests?

A. Yes.

Q. Mr. Lineberry, will you compare OCB-10, which is the ticket sales report sheet from October 12th—I will withdraw that question. Let me see this manifest. Get the sales report for 11-6-58. Now, what is that? You compare OCB-46 with OCB-72, is that correct? A. Correct. [303]

* * *

Q. Did you have any conversation with Mr. Fox or Mr. Dorfer relating to whether or not Catalina acts as the agent for Dunes, or in what capacity Catalina acts for Dunes? A. Yes.

Q. All right. Will you tell us what Mr. Dorfer or Mr. Fox—and identify each one of them—told you about that? [306]

A. I talked primarily with Mr. Dorfer, and he stated that Catalina, Catalina Airlines performs the flights for Dunes Hotel and does certain ticketing and manifesting work for them. Other than that,

(Testimony of Charles Herbert Lineberry.)

Catalina was not involved in the Dunes tour, Magic Carpet Tour. [307]

* * *

Q. Mr. Lineberry, did you have any occasion to interview Mr. David B. Hugh, General Manager of the Catalina Airlines? A. Yes.

Q. Will you tell us when you did that?

A. December 15, 1958.

Q. And where did you do that?

A. At Catalina's offices at 186 North Canyon Drive, Beverly Hills, Los Angeles.

Q. Did you have any conversation with Mr. Hill?

A. Yes, I did.

Q. Will you tell us what that conversation was about?

A. I asked Mr. Hill for a copy of the agreement between Catalina Airlines and the Dunes Hotel. Mr. Hill gave me such a copy of that agreement.

Q. And what else did he give you, if anything?

A. He, also—I should clarify that last answer. He gave me a copy of the agreement which I photographed. I don't [313] mean—what I am trying to say is he didn't give me a copy to keep. He just let me examine a copy. He also gave me a ledger card which had notations on both sides concerning the——

Mr. Ginsburg: I object. As to those documents, let's get them introduced.

Examiner Walsh: Very well. Let the witness finish his answer.

(Testimony of Charles Herbert Lineberry.)

The Witness: He showed me a cash account ledger card.

Mr. Ginsburg: Objection.

Q. (By Mr. McCollam): Just say what he said. He gave you the ledger card, period, that is all?

A. Yes.

Q. I call your attention to what will be marked for identification——

Mr. McCollam: I would like to have marked for identification OCB 130 through 135, and OCB 136 and 137.

(Documents referred to were marked for identification as OCB-130 through -135; OCB 136, 137.)

Q. (By Mr. McCollam): I ask you if you can identify those, Mr. Lineberry? A. Yes.

Q. What are they, Mr. Lineberry?

A. OCB 130 through 135 comprise the agreement which [314] Mr. Hill gave me between Catalina Transport and M & R Investment Company.

Q. What are the OCB 136 and 137?

A. OCB 136 and 137 are the front and back of a ledger card given to me by Mr. Hill, which he explained was the payments received by Catalina for the flights it performed for the Dunes Hotel.

Q. Would you say that that was a sample ledger sheet, or is that the ledger?

A. This is the ledger that he gave me, a photograph of it. [315]

(Testimony of Charles Herbert Lineberry.)

Cross-Examination

By Mr. Ginsburg: [317]

* * *

Mr. McCollam: Mr. Examiner, before Mr. Ginsburg cross-examines, I would like to have the witness identify what has been marked as OCB-1, which is a picture of the—well, I will [325] have the witness identify it.

(Document handed to the witness by Mr. McCollam.)

Q. (By Mr. McCollam): Mr. Lineberry, did you take that picture? A. Yes.

Q. When and where?

A. December 14, 1958. You can see "Flight Information Board" behind Catalina Ticket [326] Counter.

* * *

DONALD REICHGOTT

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

Q. Mr. Rich, will you state your full name, sir?

A. Donald Reichgott, R-e-i-c-h-g-o-t-t, but I use Don Rich.

(Testimony of Donald Reichgott.)

Q. Are you affiliated with the C-46 Company, also doing business as Trans-Global Airlines and Golden State Airlines? A. Yes. [388]

Q. What is your connection with that organization? A. President.

Q. You are president? A. Yes.

Q. Of what? A. Trans-Global Airlines.

Q. Is that now a corporation?

A. That is a corporation. [389]

* * *

Mr. Ginsburg: We have a stipulation, Mr. Examiner, as to several of the respondents, the identity of them, and their principals. Mr. Rich and Mr. Miller are partners doing business as C-46 Company, one of the respondents in this proceeding. Another respondent in this proceeding is Trans-Global Airlines, Inc., a corporation, which has in the past I believe done business as Golden State Airlines, and the principals in that company are Donald Rich and Fred Miller, is that correct?

The Witness: That is correct.

Mr. Ginsburg: Is that our stipulation?

Mr. McCollam: That is correct. [390]

* * *

HARRY R. LLOYD

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

Q. Will you state your full name, Mr. Lloyd?

A. Harry R. Lloyd.

* * *

Q. With whom are you employed, Mr. Lloyd?

A. The M & R Investment Company, Inc.

Q. Where? A. Las Vegas, Nevada.

Q. At the Dunes Hotel? A. Yes, sir.

Q. What is your position there?

A. Controller and assistant to the [397] president.

* * *

LOUIS LEROY FUSON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

Q. Mr. Fuson, will you state your full name and address for the record?

A. Louis Leroy Fuson. [401]

* * *

Q. With whom are you employed, Mr. Fuson?

(Testimony of Louis Leroy Fuson.)

A. Bonanza Airlines.

Q. What position do you occupy with the Bonanza Airlines?

A. District sales manager, San Diego.

Q. Did you ever take the Dunes Magic Carpet Tour? A. Yes, sir, I did.

Q. Could you tell us when you did, Mr. Fuson?

A. September 21, 1959.

Q. Where did you take that tour from?

A. International Airport here in Los Angeles.

Q. How did you obtain passage on that tour?

A. I purchased the tour booklet at the Catalina Pacific counter at the International Airport.

Q. How much did you pay for that, if you did pay anything? A. \$24.95.

Q. Where did you board the plane?

A. At International Airport.

Q. Were there any people, other people aboard the plane?

A. Yes, there were; there were two besides myself who boarded here at Los Angeles. [402]

Q. Then where did the plane go, Mr. Fuson?

A. To Burbank.

Q. What happened at Burbank, if anything?

A. An additional group got on, and we proceeded to Las Vegas.

Q. Would you know how many people got on?

A. Roughly 15, or 12 got on in Burbank, and this was according to what the hostess told me.

Mr. Ginsburg: Object and move to strike that as hearsay.

(Testimony of Louis Leroy Fuson.)

Q. (By Mr. McCollam): Approximately how many do you think——

Examiner Walsh: Just a moment.

Read the record, please, Mr. Reporter, the last question and answer.

(The record was read.)

Examiner Walsh: You mean the stewardess on the aircraft?

The Witness: Yes, yes.

Examiner Walsh: Overruled.

Q. (By Mr. McCollam): Then what happened after the people boarded the plane at Burbank, Mr. Fuson?

A. We proceeded to Las Vegas.

Q. What happened, if anything, during the course of the flight?

A. We were served champagne. [403]

Q. When you say you were served champagne, do you mean that you were given a glass of champagne, is that correct? A. Yes.

Q. Were any announcements made on the plane while you were en route? Were any announcements made on the plane while you were en route from Burbank to Las Vegas?

A. Yes, the flying time was announced, but it was inaudible, I didn't get it.

Q. You didn't? A. No.

Q. Did you finally arrive at Las Vegas?

A. Yes.

Q. What happened there, if anything?

(Testimony of Louis Leroy Fuson.)

A. We were told by the hostess to proceed to a limousine which was waiting for us where a host of the Dunes Hotel would give us further instructions.

Q. All right. Did you get on the bus?

A. Yes, I did.

Q. Where did the bus take you?

A. To the Dunes.

Q. What did you do there, if anything?

A. I went in and ate at their Chuck Wagon, and left the hotel shortly after that.

Q. Did you obtain, is that all that you obtained for your flight coupon, for your booklet? [404]

A. No, I procured a bottle of champagne.

Q. What did you do after you obtained the champagne, Mr. Fuson?

A. I returned to the Thunderbird Hotel where I had reservations. [405]

* * *

Q. Now, going back to your procurement of this booklet, you say you procured it at the Catalina Pacific counter? A. Yes.

Q. Did you talk with anyone there?

A. The agent, the ticket counter agent with whom I made the transaction.

Q. Now, can you tell us what you said to him, and what he said to you? [406]

* * *

A. I appeared at the counter two times. First I asked if it was possible to get on the plane to Las Vegas that evening, and he said, yes. I left the

(Testimony of Louis Leroy Fuson.)

counter, and told him that I would probably be back. I returned, oh, approximately five minutes before the flight was to leave, told him that I wanted to take the trip. He gave me the booklet with coupons, I paid him, and walked away from the counter.

Q. Did you make any reservations at the Dunes Hotel? A. No, I did not. [407]

* * *

Q. How did you go about purchasing this booklet? [409]

* * *

The Witness: I told the agent that I wanted to take the Dunes trip, and he asked me if there was one in my party, that was all. I gave him the money, and he gave me the coupon booklet, and I proceeded to the gate to board the flight.

* * *

Q. Mr. Fuson, I show you what has been marked for identification as OCB-141, 142, and 143, and ask if you can tell us what they are. [410]

* * *

The Witness: These are part of the coupons given to me by the agent at Catalina Pacific counter when I told him that I wanted to take the Dunes trip.

Q. (By Mr. McCollam): Now, these are the

(Testimony of Louis Leroy Fuson.)

original coupons that were in the book, is that correct? A. Yes.

Q. OCB-141, 142 and 143, is that correct?

A. Yes.

Q. Now, this 141 says, "Entitles our guest to one cocktail," did you avail yourself of that privilege?

A. I did not.

Q. 142 says, guarantees, "Entitles our guest to a guaranteed show reservation and one cocktail in our fabulous Arabian Room," did you avail yourself of that privilege? [411] A. I did not.

Q. OCB-143 says, "Entitles our guest to limousine service from the Dunes Hotel to airport," did you avail yourself of that privilege?

A. I did not.

Q. I show you now, Mr. Fuson, what has been marked for identification as OCB-144, and it is marked "Customer Copy," and it is numbered as No. 03502, and ask you where you obtained that.

* * *

A. From the agent at the Catalina Pacific ticket counter when I purchased the tour.

Q. Were there other attachments to this?

A. Yes, these other coupons.

Q. What else, do you recall?

A. Well, the one which is used for the flight coupon between Los Angeles and Las Vegas. [412]

* * *

Q. What this booklet contained?

A. Well, there were other coupons, one for the

(Testimony of Louis Leroy Fuson.)

flight between Las Vegas and Los Angeles, the limousine between the airport at Las Vegas and the Dunes Hotel, the buffet coupon, which is good for the Chuck Wagon.

Q. You previously testified that you availed yourself of the Chuck Wagon, is that correct?

A. Yes, yes.

Q. Let me ask you this, Mr. Fuson: Did you return from Las Vegas to Los Angeles on the Dunes Hotel plane? A. No, I did not.

Q. Now, the booklet you testified had a return coupon for air transportation from Las Vegas to Los Angeles. [413] A. Yes.

* * *

Q. What did you do with the return pass that you received in this booklet?

A. I gave it to Mr. Mitchell.

Q. Who is Mr. Mitchell?

A. He is our vice president of traffic and sales, my [414] superior with the company. [415]

* * *

Cross-Examination

By Mr. Ginsburg: [416]

* * *

Q. Were you traveling on business when you went to Las Vegas on the occasion you have testified about?

A. I was instructed by Mr. Mitchell to take the

(Testimony of Louis Leroy Fuson.)

trip, I don't know whether it was business or what it was.

Q. Mr. Mitchell doesn't instruct you what to do with your personal life, does he? A. No.

Q. Mr. Mitchell is your superior, he issues orders pertaining to your business affairs, is that right?

A. Yes.

Q. Did you ever receive the \$24.95 that you expended for the Dunes Magic Carpet Tour back from Bonanza Airlines? [417] A. Yes.

Q. Now, when you were at the counter—strike that, please.

Bonanza operates between Los Angeles and Las Vegas, does it not? A. Yes.

Q. You could have flown free at any time between Los Angeles and Las Vegas on Bonanza Airlines, is that right? A. Yes. [418]

* * *

Q. Now, am I correct, Mr. Fuson, the Thunderbird Hotel has a tour arrangement with Bonanza Airlines, is that correct? A. That is right.

Q. That is where you stayed is the Thunderbird Hotel? A. Yes.

Q. As part of that tour arrangement, it is a sort of a combination of air transportation and hotel accommodations, is that right, the passenger or guest pays, or the hotel guest pays an over-all price for air, for the air trip, and for the hotel space, isn't that right?

A. There are two separate transactions. The airline ticket is purchased, and a tour order is purchased.

(Testimony of Louis Leroy Fuson.)

Q. The tour includes the hotel, is that right?

A. That is right. [419]

* * *

Q. They were free with the champagne, weren't they?
A. Yes.

Q. How many glasses did you have?

A. Three or four, I don't recall. [421]

* * *

Q. Did Mr. Mitchell know where you would be staying in Las Vegas?

A. I asked him to get me a room at the Thunderbird, yes, he knew where I would be.

* * *

Q. You are absolutely certain the name Dunes didn't appear anywhere on that counter, is that right?
A. On the counter?

Q. Any place in the counter area?

A. It appeared on the gate pass, or the folder that I received my coupons in, my tour coupons.

Q. That document identified you as a guest of the Dunes Hotel, is that right?
A. Yes. [422]

* * *

Q. Now, what was your first statement to the person behind the counter?

A. I asked him if there were any seats available to Las Vegas on the Dunes trip.

(Testimony of Louis Leroy Fuson.)

Q. You specifically mentioned the Dunes in that connection? A. Yes.

Q. What did he say to you?

A. He said, yes, there was.

Q. Is that the extent of your conversation?

A. Then I said I would like to go, I said I will probably be back, and I walked away from the counter. [423]

* * *

Q. Mr. Fuson, when you returned to the Catalina Pacific counter in the Los Angeles Airport, did you deal with the same agent you had spoken to before?

A. Yes.

Q. What time interval elapsed between your first and second conversations with this agent?

A. I would say between 10 and 15 minutes.

Q. The agent knew who you were, didn't he, he knew you had been at the counter a few minutes before? [427] A. I don't know.

Q. Now, you say you made this report the day following the flight to Las Vegas, is that right?

A. Yes.

Q. I am going to read into the record a paragraph from your report.

"After finishing my conversation with the reservation office I went to the Catalina Pacific counter in the Terminal Building at International and spoke to the agent as to availability of the tour for that particular day. I was told that it would depend on what day I wanted to return. It was necessary for

(Testimony of Louis Leroy Fuson.)

me to tell the agent how many nights I wanted to stay; however, the ticket agent was unable to tell me whether or not rooms were available on any certain day. With this I walked away from the counter saying that I would probably be back." [428]

* * *

Q. At the time of your first inquiry you indicated you were going to stay overnight, is that right?

A. I made no indication at all. I just asked if it were possible to get room reservations.

Q. Room reservations, is that right?

A. Room reservations.

Q. At the Dunes Hotel? A. Yes, sir.

Q. This agent then knew you were interested in rooms at the Dunes Hotel when you came back the second time, is that right, if he remembered you he knew this?

A. If he remembered me, yes, he should have known that.

Q. Now, the hostess also poured out champagne for passengers, tour passengers other than you, is that right? A. Yes.

Q. And, did she, did you see her pouring several glasses for different people, several glasses of champagne? A. Yes.

Q. Did you see anyone refused the champagne?

A. No. Did I, did you say? [429]

* * *

Q. In other words, anyone who wanted more champagne got as much as they wanted?

(Testimony of Louis Leroy Fuson.)

A. Yes.

Q. Now, when you arrived in Las Vegas was anyone there to meet the plane? A. Yes.

Q. Was that a man? A. Yes.

Q. Did he greet the people at the plane?

A. Yes.

Q. Did he escort the people somewhere?

A. From the plane to the limousine.

Q. It is a fact, isn't it, that all the people got in the limousine that were on the plane?

A. I don't know.

Q. Do you know anybody who didn't?

A. No, I don't.

Q. Where did this bus go, or limousine?

A. To the Dunes.

Q. Where else did it go?

A. Well, while I was on it, it just went to the Dunes. [430]

Q. All the people got off, is that right?

A. I don't know, there were people behind me on the bus. I walked into the hotel. I don't know whether they all got off or not.

Q. Excuse me, did you see anyone stay on the bus? A. No, I didn't. [431]

* * *

Q. Can you tell us whether or not this was just a last minute purchase of this tour, just under the gun for the flight, before the flight was closed out?

A. Yes, it was, it was right at their departure time.

Q. Was the agent in a hurry in writing this ticket, tour ticket, and so forth?

(Testimony of Louis Leroy Fuson.)

A. Yes, he was.

Q. Were there any other guests of the Dunes Hotel who were there at the counter being checked in for the flight, or were they all departed by that time?

A. They had left by that time. [433]

* * *

Recross-Examination

By Mr. Ginsburg:

Q. Does Bonanza Airlines have a tour arrangement with the Dunes Hotel? A. No.

Q. Did they ever have one with the Dunes Hotel?

A. I believe we did. I don't know for sure, but I believe we did at one time.

Q. Didn't you receive instructions from someone to discontinue the tour arrangement with the Dunes Hotel? A. Yes, that is right, that is right.

Q. Whom did you receive the instruction from?

A. It was put out in bulletin form, I don't recall whose name was signed. [438]

* * *

Mr. Ginsburg: Mr. Examiner, at this time I would like to make a motion to strike all the testimony of this witness on the grounds that it is beyond the period of the complaint, I make it for the record. After the complaint was filed is what I mean to

say, it relates to periods after the complaint was filed.

Examiner Walsh: The motion is denied. [440]

* * *

DON NIELSON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. McCollam:

Q. Mr. Nielson, will you state your full name and address for the record, please?

A. Don Nielson, N-i-e-l-s-o-n; 1113 South Third, Las Vegas, Nevada.

Q. For whom are you employed, and, in what capacity?

A. I work for Bonanza Airlines, I am assistant to the executive vice president.

Q. Did there come a time, Mr. Nielson, when you rode or flew on the Dunes Hotel Magic Carpet Tours?

A. Yes, there was a time.

Q. When was that? [446]

A. October 22; October 22, 1959.

Q. From where did you depart, and where did you go?

A. I rode from Las Vegas to Los Angeles on a ticket, return portion of a ticket that was originally purchased by Mr. Fuson.

(Testimony of Don Nielson.)

* * *

Q. I show you what has been marked for identification as OCB-144, and ask you if you have seen this exhibit before, Mr. Nielson? [447]

* * *

Q. Have you ever seen this before, Mr. Nielson?

A. Yes, I have, this is the portion that was retained from the ticket that I used.

Q. Where did you get it? [448]

* * *

A. I received it from Mr. Mitchell.

Q. The number on here is what?

A. No. 03502.

Q. What condition was the booklet in when you received it from Mr. Mitchell?

A. It was in the same condition except that it had a return portion ticket attached thereto.

* * *

Q. What did you do, if anything, with that return ticket or pass or coupon?

A. I drove down to the Dunes Hotel, and went inside, and was referred to a Mr. Chuck Mann, who I inquired of as to whether there would be space available. [449]

* * *

The Witness: And I inquired as to whether or

(Testimony of Don Nielson.)

not there was space available on a flight leaving at approximately that time to Los Angeles, and he said, yes, and tore off the coupon, and gave me a gate pass.

Mr. McCollam: I see.

The Witness: And from there I went out and boarded a bus in the front of the Dunes Hotel, which took me to the airport, and I was directed to a C-46.

Mr. Ginsburg: I am going to object unless we identify who is directing him to these places. I would also like the first person identified that directed him to Mr. Mann.

The Witness: It was a lady at the counter, at the reservations desk.

Mr. Ginsburg: At the airport?

The Witness: No, at the Dunes Hotel.

Mr. Ginsburg: Thank you.

The Witness: Mr. Mann himself directed us towards the airplane, he rode the bus out to the field.

Q. (By Mr. McCollam): All right. What did you do after you got to the airport? [451]

A. As I say, then I boarded the C-46, and we went to Los Angeles, we stopped en route at Burbank where several people got off, and then proceeded to Los Angeles. We arrived there I think about 6:00, a little after 6:00 o'clock in the evening.

Q. Now, while you were on the plane, did you notice whether or not there were any other passengers aboard the plane?

(Testimony of Don Nielson.)

A. Yes, there were over 40 that I, that was my estimate, on the airplane at the time, including a number of small children. [452]

* * *

Q. After the plane left Las Vegas where did the plane first land, did you say?

A. Burbank; Burbank, California.

Q. Did you stay aboard the plane?

A. Yes, sir. Several people got off there.

Q. What happened?

A. And then it continued on to Los Angeles International Airport.

Q. What time did you say it arrived there?

A. It was a little after 6:00 p.m.

Q. What did you do, if anything?

A. Well, when I arrived there I walked into the Catalina Pacific ticket counter and inquired of the agent there whether there was a Dunes flight leaving, when the next Dunes flight was leaving for Las Vegas, and he said, right now. And I asked him what the fare was, and he said, it isn't exactly a fare, that it is kind of a package plan depending upon how long you are going to stay. And so I asked him how much it cost, and he said \$24.95. And he asked me [453] how long I wanted to stay, and I said, overnight. So, I bought a ticket from him, and he made a motion towards a book, said sign this. And I asked what it was, and he said it was a register.

Q. Did he say what kind of register it was?

A. I don't recall whether he did or not. And I

(Testimony of Don Nielson.)

signed the register, and proceeded to the airplane; it was the same C-46.

Q. Now, just a minute, Mr. Nielson.

I show you, Mr. Nielson, what has been marked for identification as OCB-145, 146 and 147——

Examiner Walsh: Will you mark those for identification, Mr. Reporter?

(OCB Exhibits Nos. 145, 146 and 147 were marked for identification.)

Q. (By Mr. McCollam): ——and ask you to look at them, and tell me whether you can identify them or not?

A. That is the ticket that I purchased at the Catalina Pacific Airlines counter for the return flight. [454]

* * *

Q. Now, is that booklet in the condition it was when you purchased it?

A. No, the flight coupon for the return flight from Los Angeles is missing, as is a coupon for limousine service from the airport to the Dunes Hotel. The stewardess picked that up on the airplane just before we arrived in Las Vegas, that is, the limousine coupon.

Mr. Ginsburg: May the record show that my objection under the best evidence rule is continuing?

Examiner Walsh: Yes, Mr. Ginsburg.

Q. (By Mr. McCollam): Now, these separate little, what is another word for ticket?

Mr. Ginsburg: Coupon?

Q. (By Mr. McCollam): These separate little

(Testimony of Don Nielson.)

coupons that are a part of OCB-145 would indicate a number of privileges, the buffet dinner, one cocktail in the Sinbad Lounge, a reservation, and one cocktail at a show, one bottle of Gold Label Champagne, special Gold Label Champagne, and limousine service from the Dunes, from the airport, I mean, from the Dunes Hotel to the [455] airport, did you avail yourself of any of these privileges?

A. No, sir, I did not.

Q. Now, after you purchased your ticket, I mean, after you purchased the coupon book, what did you do.

A. I proceeded out to the gate that I was directed to, I don't recall the number, the gate number, to board the return flight to Las Vegas.

Q. Well, where did the plane go from Los Angeles, if it went anywhere?

A. After takeoff it proceeded to Burbank California. I think it had about eight people on when it left Los Angeles, and, at Burbank they picked up a few more people, and from there it proceeded to Las Vegas.

Q. All right. What happened after the plane landed at Las Vegas?

A. Well, as I said before, the stewardess had picked up the limousine coupon.

Mr. Ginsburg: I object, this has all been covered before, Mr. Examiner, I thought it had been.

Mr. McCollam: He said about, the stewardess took off, then what happened after the plane——

Examiner Walsh: I think it has.

(Testimony of Don Nielson.)

Q. (By Mr. McCollam): After the plane landed at Las Vegas?

A. As we got off, as I got off the airplane, I was [456] directed towards the bus, the limousine. It was a bus, but, I don't recall, oh, it was Mr. Mann; Mr. Mann was there at the gate to direct us towards this bus, and we got on this bus, and Mr. Mann then inquired as to how long some of the people were going to stay, or had planned on staying, and a few of them——

Mr. Ginsburg: I object, it is hearsay, what these other people might have said.

Q. (By Mr. McCollam): What happened after that, Mr. Nielson?

Examiner Walsh: Sustain the objection.

The Witness: The bus proceeded to the Dunes Hotel, and when I arrived there, why, I got off the bus, and that was the end of the journey. There was no further direction as to where anybody should go. [457]

* * *

Cross-Examination

By Mr. Ginsburg:

* * *

Q. Now, you say you have a report of your investigation in Las Vegas, is that right? [458]

A. Yes, upon my return to Las Vegas I prepared a memo to the executive vice president.

Q. Where did you live at this time, what city?

(Testimony of Don Nielson.)

A. Las Vegas.

Q. What address did you give to the Dunes Hotel when you took this flight, or to the Catalina person?

A. The address I gave to the Dunes?

Q. Yes, at the Los Angeles International Airport, what address did you give them as your address?

A. I wrote a Wilmington, California address.

Q. It was a false address, is that right?

A. Yes.

* * *

Q. Don't you know that they won't allow a person on that flight unless they are going to be a guest of the Dunes Hotel?

A. Well, that is what they purport, but, of course, I [459] was not a guest of the Dunes Hotel.

Q. If you had given a Las Vegas address, isn't it a fact they wouldn't have let you on that airplane?

A. Well, I don't know.

Q. That is why you didn't give a Las Vegas address, isn't it?

A. I gave a California address to avoid any problems, yes. [460]

* * *

Q. Do you personally object to the Dunes operation? You can answer that "Yes" or "No," if you will.

A. Yes.

Q. Now, you have a pass to travel on Bonanza Airlines, don't you?

A. Yes, sir.

(Testimony of Don Nielson.)

Q. Bonanza Airlines fly from Las Vegas to Los Angeles? A. Yes, sir. [468]

Q. Fly from Los Angeles to Las Vegas also, Bonanza flies both ways? A. Yes, sir.

Q. You could have flown on that pass, couldn't you? A. Yes, sir.

Q. Instead of that, you paid for this tour ticket, is that right? A. That is correct.

Q. You were reimbursed by Bonanza, is that correct? A. Yes, sir. [469]

* * *

Q. Your notes state that you asked the following question of the person behind the Catalina counter after you had received the coupon book you have identified. Your question is, "What is this?"

Agent's answer, "A guest register."

Is that correct? A. Yes, sir. [470]

Q. And the agent identified the book that you signed as the guest register, is that right?

A. Yes, sir.

Mr. Ginsburg: Mr. Examiner, I would like to have marked for identification as Respondent's Exhibit 2, a document which purports to be a guest register of the Dunes Hotel.

Examiner Walsh: You may mark it for identification as Exhibit No. 2 of the respondent.

(Respondent's Exhibit No. 2 was marked for identification.)

Q. (By Mr. Ginsburg): I show you Respondent's Exhibit 2, for identification, and I ask you if

(Testimony of Don Nielson.)

this is the type of register that you signed, the type of register that you signed?

A. Yes, I believe that is.

Q. Isn't it a fact that the heading is "Guests," the heading of each page? A. Well, yes.

Q. You signed that, is that right, one similar to this?

A. I signed one similar to that, yes.

Q. You gave a false address on it, is that right?

A. I gave an address where I was not living, yes.

Q. Now, you knew, did you not, that you were signing as a guest of the Dunes Hotel?

A. I was merely signing a book, I didn't notice whether [471] it was marked "Guests" or not at the time.

Q. You see this page? A. Yes.

Q. You now remember it was a page just like this, is that right? A. Or similar thereto.

Q. And the top word is "Guests"?

A. On this one it is, yes.

Q. Immediately prior to signing it, you asked the agent what it was, and he said it was a guest register? A. Yes.

Q. You knew it was a guest register?

A. That is what the agent said it was.

Q. You knew, had no reason to believe he was telling you an untruth, did you? A. No.

Q. Whose guest did you know you were at that time?

A. I was no one's guest as far as I was concerned.

Q. You knew when you were signing that book

(Testimony of Don Nielson.)

that you were signing the Dunes Hotel guest register, didn't you?

A. I did not know that it belonged to the Dunes Hotel.

Q. Whose flight were you flying on?

A. The Dunes flight.

Q. Who were you investigating?

A. Dunes Hotel. [472]

Q. Is the Dunes Hotel, is the Dunes a hotel in Las Vegas? A. Yes.

Q. Do they operate an aircraft for their guests?

A. They operate an aircraft between Las Vegas and Los Angeles.

Q. And you got on that aircraft? A. Yes.

Q. You signed a guest register. Now, I will ask you again, whose guest were you when you signed that register?

A. Well, the fact that it is stated as a guest doesn't make you a guest itself.

Q. If you were a guest of anyone, who were you a guest of?

A. I didn't consider myself a guest.

Q. You signed the guest register, you got on the Dunes flight, you are investigating the Dunes, the Dunes is a hotel in Las Vegas, you tell me that you don't know whose guest you were——

A. That register——

Q. ——purporting to be?

A. That register wasn't in the Dunes Hotel, it was in the Los Angeles International Airport.

Q. You knew that that guest register pertained

(Testimony of Don Nielson.)

to the flight you were going to take, didn't [473] you? A. It wasn't stated as such, no.

Q. But you knew it was a condition to your getting on the aircraft, didn't you?

A. He asked me to sign that register, and I signed it.

Q. It was part of your getting on that aircraft and taking that flight, wasn't it?

A. It wasn't stated as such.

Q. You knew that you were signing that aircraft, I mean, that register, that guest register preparatory to getting on that aircraft?

Mr. McCollam: I submit the witness has answered that question several times.

Mr. Ginsburg: I submit he has avoided answering the question, your Honor.

Examiner Walsh: Well, if you have a better answer, Mr. Nielson—

The Witness: I signed the register because I was directed to do so by the agent from whom I bought the ticket, and that was the extent of the conversation, and that is all.

Q. (By Mr. Ginsburg): Did you tell the agent you were coming back to Los Angeles?

A. Yes, I believe I told him that I was going to return, I wished to return the following day.

Q. How many other false representations did you make [474] other than your address and the fact that you were going to return to Los Angeles, to this agent?

(Testimony of Don Nielson.)

A. I told the agent that I expected to return the following day.

Q. You didn't expect to return, did you?

A. No.

Q. And if you did return, you didn't expect to come back on the Dunes Magic Carpet Tour, did you? A. No.

Q. Because you had a pass on Bonanza, isn't that right? A. Well, that isn't the reason.

Q. You were going somewhere else, is that right?

A. I didn't expect to return the following day.

Q. You were just out procuring evidence to testify in this proceeding, weren't you?

A. I was procuring the facts in the hope that it would be useful in stopping the Dunes operation, yes, sir. [475]

* * *

Q. Did you advise Mr. Mann in your conversation that you were not Mr. Fuson? A. No.

Q. You represented yourself to be Mr. Fuson, didn't you?

A. I merely presented the ticket, he didn't ask one way or the other.

Q. Didn't you think Mr. Mann knew or believed that the person handing him the ticket was the person whose name appeared on it?

A. I don't know what he thought.

Q. You didn't bother to clarify his mind on that subject, did you? A. No, sir.

Q. Do you know he would have let you go on that flight if you told him who you were?

(Testimony of Don Nielson.)

A. No, sir, I don't know.

Q. And you in no way indicated that you were not Mr. Fuson to anybody at the Dunes Hotel?

A. No, sir.

Q. Now, when you handed him the ticket, do you have that [477] ticket, tour ticket?

* * *

A. Yes, sir.

Q. And in what form was the ticket when you handed it to him? Were these little coupons identified as 141, 142, 143 on it?

A. No, those were loose, the limousine portion was, return portion on the limousine, from the Dunes to the airport was attached.

Q. Where were those, the other coupons that weren't attached, do you have them?

A. Yes, I had them in my pocket.

Q. In other words, you were trying to pose with Mr. Mann, or to Mr. Mann, that you had been a normal guest of the Dunes Hotel, and you had taken advantage of all the benefits, and [478] you were returning, the only thing left was your limousine service and your return flight on the plane, is that right?

A. You had to remove those portions in order to get to the limousine coupon, it was just a matter of removing those so that the limousine coupon could be detached.

Q. But you detached before you talked to Mr. Mann, didn't you?

(Testimony of Don Nielson.)

A. Well, I think they were already detached. I think that the champagne coupon is in between there, and both of those were also detached.

Q. Why didn't you use these coupons? Don't you like champagne? A. Occasionally.

Q. Why didn't you use it?

A. Well, that particular ticket had no champagne coupon.

Q. Didn't you want a cocktail in the Sinbad Lounge? A. No, sir.

Q. You don't drink, is that right?

A. I didn't choose to drink at that time.

Q. Isn't it a fact that the reason you didn't use these coupons is because you wanted to come back here and testify that somebody could do what you did and not use the coupons, isn't that the real reason?

A. I wanted to testify that a person did not necessarily have to be a guest of the Dunes Hotel in order to use the [479] transportation.

Q. In other words, Mr. Fuson hadn't done a good enough job because he made the mistake of going over there and taking the Chuck Wagon and the Champagne, and you felt you would do a better job, is that right?

A. I felt that I could provide additional information which might be helpful.

Q. You knew that Mr. Fuson had used parts of the Magic Carpet Tour, some of the services and benefits? A. Yes, sir.

(Testimony of Don Nielson.)

Q. You determined not to use any of them, right, except the ones you had to use?

A. Yes, sir. [480]

* * *

Q. You were trying to get anything you could to make them stop performing these Magic Carpet Tours, weren't you, that was your job?

A. I was trying to accumulate the facts in order to prevent them from continuing this [482] operation.

* * *

Mr. Ginsburg: Mr. Examiner, at this time I would like to identify Exhibit R-3, which has been identified previously during the Executive Session. It purports to be a wine list of the Dunes Hotel.

(Respondents' Exhibit No. 3 was re-marked for identification.)

Examiner Walsh: Very well. You are offering it?

Mr. Ginsburg: I am offering it in evidence at this time.

Examiner Walsh: It is received.

(Respondents' Exhibit No. 3 was received in evidence.) [521]

FRED A. MILLER

called as a witness by and on behalf of the Office of Compliance and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

Q. Will you state your full name and address for the record, Mr. Miller?

A. Fred A. Miller, 1717 Via Arriba, Palos Verdes Estates.

Q. That is, I assume it is in California?

A. California.

Q. In the Los Angeles area? A. Yes.

Q. Mr. Miller, what is your connection, if any, with the C-46 Company?

A. I am a half owner.

Q. What is your connection, if any, with Trans-Global Airlines?

A. I am a half owner and vice president.

Q. Are Trans-Global Airlines and Golden State Airlines [522] one and the same?

A. One is a DBA.

Q. Does Trans-Global Airlines own any aircraft? A. No.

Q. Does the C-46 Company own any aircraft?

A. No. [523]

* * *

Q. Now, is there anything, any way you can

(Testimony of Fred A. Miller.)

approximate the time, was it in '58, or '59, Mr. Miller? A. I would say in '58.

Mr. Ginsburg: I am going to object to any questioning on any period prior to January 1, 1959, on the grounds there is no charges in this case pertaining to that period.

* * *

Mr. Ginsburg: I mean, the charges are under the Federal Aviation Act of 1959, which does not become effective until January 1, 1959. [525]

Examiner Walsh: Very well. Overruled. [526]

* * *

Mr. Ginsburg: During the off-the-record period, Mr. Examiner, we have agreed on a stipulation which I will read into the record. This pertains to the operation of the CW 20T aircraft N 9514.

Commencing on the first day of April, 1959, the C-46 Company was composed of Mr. Fred Miller and Mr. Don Rich, leased CW 20T Aircraft N 9514 to the Dunes Hotel. The Dunes contracted with Catalina Airlines to operate the Dunes Magic Carpet Tour using this aircraft. However, Catalina was unable to get this aircraft on its operating certificate, therefore, Trans-Global Airlines operated the aircraft on its part 45 operating certificate. Prior to a date late in December, I believe it is the 26th, 1959, payment was made by the Dunes to Catalina. Catalina in turn paid the salaries of

(Testimony of Fred A. Miller.)

the pilots [539] who were employees of Trans-Global, the landing fees, insurance, gasoline, and other operating expenses. Catalina, however, used its own stewardesses and ticket counter.

Commencing late in December, 1959, approximately the 26th, payment was made by the Dunes directly to Trans-Global.

You will get an opportunity to make any changes.

Pending the approval by the Federal Aviation Agency of Catalina's operation of the CW 20T, in other words, it is anticipated that Catalina will obtain this authority, and will resume the operation. It is also stipulated that the ticket counter at Los Angeles Airport is operated by Catalina, and has been, and that Trans-Global has had nothing to do with that operation.

Is that a true and correct description of the facts Mr. Miller, so far as it goes?

The Witness: That is correct.

Mr. Ginsburg: Is that agreeable with you, Mr. McCollam, is that our stipulation, that that is the operation?

The Witness: Mr. Ginsburg, the reason I raised my hand was——

Mr. Ginsburg: Just a moment. As a witness in this proceeding you can't make a statement.

The Witness: You asked me for a correction, didn't you?

Mr. Ginsburg: Do you have any correction you want to make on the statement? [540]

The Witness: The statement was made, I be-

(Testimony of Fred A. Miller.)

lieve, that Catalina operated all the counters, it is only the one counter.

Mr. Ginsburg: At the Los Angeles Airport I said.

The Witness: All right.

Mr. Ginsburg: That is it.

Mr. McCollam: Now, can you add, this is on the record, can you add to that, Mr. Miller, who operates the counter at Burbank?

The Witness: Dunes.

Mr. Ginsburg: Just a minute. I object. That hasn't got anything to do with this issue. We will stipulate that the Dunes operates it, but we are not going to get into matters with Mr. Miller who has——

Are you an employee of the Dunes, Mr. Miller?

The Witness: No.

Mr. Ginsburg: Are you authorized to speak for the Dunes Hotel?

The Witness: No.

Mr. Ginsburg: We have Mr. Miller's qualifications in the record here.

Mr. McCollam: Will you stipulate that the Dunes operates a counter at Burbank?

Mr. Ginsburg: I think that is absolutely ridiculous, will I stipulate to that?

Mr. McCollam: Yes. [541]

Mr. Ginsburg: Yes, I do.

Mr. McCollam: All right.

Could you read back the first part of the stipulation, Mr. Reporter?

(Testimony of Fred A. Miller.)

Examiner Walsh: Yes, read it back.

(Record read.)

Mr. McCollam: Off the record.

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Mr. McCollam: I will stipulate that those are the facts.

Mr. Ginsburg: I am going to address a couple of questions to Mr. Miller.

Cross-Examination

By Mr. Ginsburg:

Q. I show you Exhibit for identification OCB 150, will you look at it please. Will you note there is a column headed non-revenue or non-rev, do you see that on the first page? A. Yes.

Q. Can you state to the Examiner what class or group of persons are permitted to board the aircraft?

A. These are people that are guests of the Dunes Hotel who have not bought, purchased either the overnight tour or the other tour.

Q. In other words, have not purchased the Magic Carpet [542] Tour, is that right?

A. That is right.

Q. Have you given your pilots, the pilots of Trans-Global Airlines any instructions with re-

(Testimony of Fred A. Miller.)

spect to who may be permitted on the aircraft with respect to the flight, just yes or no?

A. Yes, I have.

Q. What are those instructions?

A. I have instructed them not to permit anybody on board the aircraft unless they hold a ticket on the Magic Carpet Tour, or a pass from an employee or official of the Dunes Hotel.

Q. To whom are those passes to be issued to?

A. Only to the guests of the hotel, or to the employees of the hotel.

Q. Have you ever been told by any official of the Dunes Hotel as to who is to be permitted on this aircraft?

A. Mr. Riddle has made that very clear to us.

Q. What has Mr. Riddle said on that subject?

A. "No one is to go on the airplane except guests of the hotel, persons authorized by me, or an official of the hotel."

Q. When you said "by me" whom did you refer to? A. Major Riddle.

Q. To the best of your knowledge and belief, have you and the employees of Trans-Global Airlines followed these instructions precisely to the letter?

A. To the best of my knowledge and [543] belief, yes.

* * *

DAVID HILL

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

Q. Would you state your full name and address, Mr. Hill?

A. David Brice Hill, 801 South Longwood Avenue, Los Angeles 5. [561]

* * *

Q. Mr. Hill, what position, if any, do you occupy with Catalina Air Transport?

A. General manager.

Q. Do you hold any office in the corporation?

A. Vice-president. [562]

* * *

Mr. Ginsburg: Mr. Examiner, at this time I would like to read into the record the stipulation between myself, as counsel for, temporary counsel for Catalina, and Mr. McCollam, counsel for the Office of Compliance.

Examiner Walsh: Proceed, Mr. Ginsburg.

Mr. Ginsburg: Thank you, your Honor.

Item No. 1: DC-3 aircraft N33644 and DC-3 N18101—Catalina operated these two aircraft on occasional flights for the Dunes Magic Carpet Tour during the year 1959. These aircraft were operated

(Testimony of David Hill.)

between Los Angeles and Burbank on the one hand and Las Vegas and return. Approximately six such flights were operated during the year 1959.

Catalina was paid between four hundred and four hundred [564] and fifty dollars per flight by the Dunes Hotel.

Item No. 2: During the year 1959 up until December 26, 1959, the Dunes Hotel paid Catalina for the Dunes Magic Carpet Tour flights from Los Angeles and Burbank to Las Vegas and return.

The two aircraft involved were DC-4 aircraft N4043A and CW-20T aircraft N9514C. However, Catalina was unable to get these two aircraft or either of them on its operating certificate.

Catalina did have contracts with the Dunes to operate flights using these aircraft. In view of this situation Catalina had to engage Trans-Global Airlines to perform the flights using these two aircraft on the operating certificate of Trans-Global. Nevertheless, Catalina was paid by the Dunes under its agreements in the sum of \$410.00 per flight when using the CW-2 aircraft, and approximately \$1,000.00 when using the CW-20T aircraft. In turn, Catalina paid the crews of Trans-Global. Catalina used its own stewardesses and paid them. Catalina paid the operating expenses of the flights including gas, oil and landing fees. Prior to April 1, 1959, Catalina also paid for the maintenance of the aircraft.

Catalina presently is attempting to get the CW-

(Testimony of David Hill.)

20T on its operating certificate and plans to operate this aircraft when this has been accomplished.

Item No. 3: The Dunes made no payments to Catalina for [565] the counter at the Los Angeles International Airport. Instead, payments from the Dunes to Catalina were on a per-flight basis. Catalina made up manifests for the Dunes Magic Carpet Tours at the Los Angeles International Airport.

Item 4: Payroll records of Catalina show that Catalina paid its own personnel who worked at the Los Angeles Airport.

That is the conclusion of the stipulation.

Mr. McCollam: May I have that read back?

Examiner Walsh: Yes.

(Record read.)

Cross-Examination

By Mr. Ginsburg:

Q. Now, have you heard the stipulation read back, Mr. Hill? A. Yes.

Q. Is it true and correct to the best of your knowledge and belief?

A. The only difference which probably isn't an important item, the crews, it states of Trans-Global. There were also crews of Catalina.

Q. And in the case——

A. Paid by Catalina.

Q. The crews of Catalina, they were paid by whom? A. Catalina.

(Testimony of David Hill.)

Q. Was that with respect to the DC-4 [566] aircraft?

A. Yes, only.

Q. That was operated during the months of January, February and March of 1959?

A. That is correct.

Q. Has some disposition be made of the DC-3 aircraft by Catalina?

A. Yes. Catalina no longer has it.

Mr. Ginsburg: Off the record, please.

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Q. (By Mr. Ginsburg): The crews of the CW-20T were the crews of what company?

A. Trans-Global. [567]

* * *

Mr. McCollam: Mr. Examiner, I identify a publication of classified advertisement which has been marked for identification as OCB 151.

(Exhibit OCB 151 was marked for identification.)

Mr. McCollam: These are ads that appear in the Los Angeles Times beginning May 4, 1958, and continuing on through September 6, 1959. The counsel for M & R Investment Company, Mr. Ginsburg, has asked me to stipulate that beginning with June——

Mr. Ginsburg: 26th.

Mr. McCollam: —June 26, 1959, until the present date, January 20, 1960, all of the ads in the Los Angeles Times advertising the Dunes Magic Carpet flights contain the following legend: The advertising contains the words "For [574] guests of the beautiful Dunes Hotel and Casino only."

Mr. Ginsburg: As it appears in the advertisement for June 26, 1959.

Mr. McCollam: Now, some of the ads have the notation, the legend, "Guests of the beautiful Dunes Hotel and Casino only."

Mr. Ginsburg: Not after that date.

May we go off the record?

Examiner Walsh: Off the record.

(Discussion off the record.)

Examiner Walsh: On the record.

Mr. McCollam: Mr. Ginsburg has asked me to stipulate that beginning June 26th each of the ads——

Mr. Ginsburg: 1959.

Mr. McCollam: —1959, each of the ads appearing in the Los Angeles Times contain the notation, "For guests of the beautiful Dunes Hotel and Casino only."

Mr. Ginsburg: With respect to the stipulation, it is the same as it appears in the ad for June 26, 1959, July 5, 1959, and all of the ads depicted in this exhibit which occurred after that time, and that is contained in each of the ads in the Los Angeles Times since that date in the same manner as depicted in the advertisement of June 26, 1959;

and with that stipulation, your Honor, I have no objection to the receipt of this document into evidence. Are you offering [575] it?

Mr. McCollam: Yes, except let us take this further stipulation that the ads, the last four clippings of ads that bear the notation for the year 1959, that they appeared prior to when?

Mr. Ginsburg: Well, I am sure they appeared in 1959. These are changed on the thing. It is to '58.

Examiner Walsh: Show the correction of dates.

Mr. Ginsburg: The correction of dates as appears on the original exhibit, the last four, 10/2/59, it is changed to 10/12/58. The one marked 12/7/59 is changed to 12/7/58. The one marked 12/15/59 is changed to 12/15/58.

Examiner Walsh: They have been corrected physically on the record.

Mr. Ginsburg: On the original exhibit they have been corrected, and I have no objection to the receipt of this document into evidence.

I want to reserve my objection, and I do, to the receipt of ads appearing before January 1, 1959, ads bearing dates before that.

Examiner Walsh: Very well. I will overrule your objection on that. OCB 151 is received.

(Exhibit OCB 151 was received in evidence.) [576]

* * *

JACK EISEN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. McCollam:

* * *

Q. Mr. Eisen, how long have you been employed for the Dunes Corporation?

A. For the Dunes Hotel, sir, it is approximately eleven months. [586]

* * *

Q. In what capacity are you employed, Mr. Eisen?

A. I am the flight director for the guests of the Dunes Hotel.

* * *

Q. What are your duties in connection with that?

A. I make reservations for the guests of the Dunes Hotel, room reservations, make reservations for the Dunes Hotel Magic Carpet Flight Tour. I make reservations for the guests of the Dunes Hotel at the hotel, whether they are driving up, going by train, or other means of transportation.

Q. Where do you do this work?

A. Lockheed Air Terminal in Burbank.

Q. Is that the full extent of your duties, Mr. Eisen?

A. I supervise the counter out at Lockheed

(Testimony of Jack Eisen.)

Air [587] Terminal in Burbank, supervise the making up of the manifests, the checking in of the guests of the Dunes Hotel at flight time.

* * *

Q. Do you also on occasion, Mr. Eisen, is there anything else that you do for—

A. Yes, I check in the passengers, the guests of the Dunes Hotel at flight time, see that they sign the guest book, that they are guests of the Dunes Hotel. [588]

* * *

Q. Mr. Eisen, I show you what has been marked, I mean, I show you a passenger manifest that is dated 3/21/59, on Line 12 of that manifest there appears a notation "NR" "NRSA" then the name of the passenger "Per Lou Griedman."

A. Yes.

Q. Now, can you tell us what the term, I mean, the notation "NR" means? [589]

A. That means no revenue collected. In other words, that passenger, that person, or is that Miss D'Ambrosia.

Q. Yes.

A. Is the guest of the hotel per Lou Friedman. He is the executive for the Dunes Hotel.

* * *

Q. All right. What does "NRSA" mean?

(Testimony of Jack Eisen.)

* * *

The Witness: It is no revenue, the passengers are no revenue passengers, SA, space available.

Q. (By Mr. McCollam): What do you mean by that then?

A. Well, Mr. Friedman who requested the space for this Dunes guest. [590]

* * *

Examiner Walsh: Very well. Do you have something to add to your answer, Mr. Eisen?

The Witness: Yes, sir.

Examiner Walsh: Proceed.

The Witness: Mr. Friedman who is the executive for the Dunes Hotel asked for this guest to be put on an airplane as a guest of the Dunes Hotel, no revenue collected, if I had a seat available for this particular passenger. [591]

* * *

Q. Now, from this manifest itself, where would it appear to you that these passengers were going?

A. We only go one place, to Las Vegas, to the Dunes Hotel.

Q. Does the plane ever come back?

A. From where?

Q. From Las Vegas? A. Yes, sir.

Q. Does it haul passengers back from Las Vegas?

(Testimony of Jack Eisen.)

A. The people we send back up as guests of the Dunes Hotel come back on our flight. [597]

* * *

Cross-Examination

By Mr. Ginsburg: [599]

* * *

Q. Now, with respect to the manifests shown you by Counsel for the Office of Compliance, but limiting your answer to those manifests from Burbank showing a flight from Burbank to Las Vegas, will you state whether or not each of the persons referred to by Mr. McCollam was a guest of the Dunes Hotel, or not?

A. Yes, sir, they all were.

Q. They were all what?

A. Guests of the Dunes Hotel.

Q. Now, Mr. McCollam asked you to explain a notation "NR," which you stated was no revenue, is that correct? A. That is right.

Q. Now, what revenue is absent in the term no revenue, what revenue are you referring to? [602]

A. The revenue for guests of the Dunes Hotel that would pay for their room and the Magic Carpet Flight package.

Q. What aspect of the package would they pay for?

A. The champagne, room reservations, buffet dinner, a bottle of champagne to take home, night

(Testimony of Jack Eisen.)

club show with a cocktail, a lounge entertainment with a cocktail. [603]

* * *

Do you rest your case, Mr. McCollam?

Mr. McCollam: Yes, sir, that is all I have to present in this case.

Mr. Ginsburg: Excuse me, Mr. Examiner, at this time I move to dismiss the proceedings on behalf of the M & R Investment Company d/b/a Dunes Hotel, on behalf of Mr. Don Rich, Mr. Fred Miller, and on behalf of Trans-Global Airlines d/b/a Golden State Airlines, on the grounds there has been no evidence of any violation of Civil Aeronautics Act introduced in evidence in this proceeding, on the grounds that it would be a futile act to continue with the proceeding to put in evidence when no affirmative case has been proved. This is an enforcement case. Under [604] the Administrative Procedure Act, the Office of Compliance has the burden of proof. No proof has been introduced or adduced in this proceeding under which the Examiner could find any of the Respondents guilty of violating any provision of the Act, or the Board regulations.

For those reasons I move at this time on behalf of the named Respondents to dismiss the proceedings.

Mr. McCollam: I think we have demonstrated amply that there are not only have been, but currently are violations of the Federal Aviation Act by the Respondents named herein. We have shown the times and places, and the terms under which they operate. I think we have more than amply filled our

duty to sustain the burden of proof, and I think this motion should be dismissed.

Examiner Walsh: Your motion is denied, Mr. Ginsburg. Will you call your first witness?

Mr. Ginsburg: I call Mr. Shechtman.

STANLEY SHECHTMAN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ginsburg:

Q. State your full name for the record.

A. Stanley Shechtman.

Q. You reside in Los Angeles? [605]

A. North Hollywood.

Q. North Hollywood, California? A. Yes.

Q. Mr. Shechtman, have you ever taken the Dunes Magic Carpet Tour to Las Vegas?

A. Yes, I have.

Q. On how many occasions have you taken the tour?

A. Approximately six times, I believe it was.

Mr. McCollam: I didn't hear you.

The Witness: Approximately six times, six different occasions.

Q. (By Mr. Ginsburg): Now, on these occasions have you stayed overnight at the Dunes Hotel?

A. Yes, I have.

Q. On every one of them? A. No. [606]

(Testimony of Stanley Shechtman.)

Q. Can you state on approximately how many of those six occasions you stayed overnight in Las Vegas when you took the Dunes Magic Carpet Tour?

A. I think it is about twice.

Q. On those occasions where did you stay?

A. At the Dunes Hotel.

Q. On the other four occasions where did you go when you arrived in Las Vegas?

A. Dunes Hotel.

Q. Where did you spend the greater portion of your time? A. Dunes Hotel.

Q. As part of this tour package, were any benefits made available to you, or did you purchase any benefits? A. You mean——

Q. Any services made available to you at the Dunes Hotel? A. Yes, yes, there was.

Q. Will you state what they were?

A. Well, I had the dinner, and went to see the show, and went to the lounge for a drink, and received a bottle [607] of champagne.

Q. Did you also receive limousine service?

A. Yes, I did.

Q. Now, do you know, or, what was your understanding as to whether or not you pay anything for the air transportation on this flight?

A. No, I understand I would buy the package, the services that I just mentioned.

Q. Yes.

A. And the transportation is free.

Q. Do you know who was permitted to travel on these, the Dunes Magic Carpet Flights?

(Testimony of Stanley Shechtman.)

A. Persons that buy the package tour.

Q. When did you last take the Dunes Magic Carpet Tour? A. January 12th.

Q. On that occasion did you purchase anything from the Dunes Hotel? A. Nothing, no.

Q. Did you travel with others on this particular flight?

A. Yes, there were 39 members of a club.

Q. Are you a member of this particular club?

A. Yes, I am.

Q. Now, on each of the occasions when you [608] traveled on the Dunes Magic Carpet Flight, were you required to sign anything at the counter?

A. Yes.

Q. In Los Angeles? A. Yes.

Q. Where did you leave from?

A. Burbank.

Q. What was it that you were required to sign?

A. Guest register.

Q. I will show you a document that has been identified as Respondent's Exhibit No. 2, and ask you if that is the type of register that you signed? Would you open it up and examine it before you answer, please. A. Yes, this is it.

Q. Now, on each of the occasions, limiting your—strike that, please.

Limiting your answer to the year 1959, on each of the occasions when you took the Dunes Magic Carpet Tour, did you sign the book similar to this?

A. Yes, I did.

Q. Did you observe others signing it?

(Testimony of Stanley Shechtman.)

A. Yes. On the last occasion I checked it against my list of club members to make sure they had signed it.

Q. Now, referring to that last occasion, do you know whether—well, strike that. [609]

Did you purchase the Dunes Magic Carpet Tour?

A. No, I did not.

Q. Do you know whether the other people in your group did? A. No, sir, none of them did.

Q. Where did these people go?

A. The Dunes Hotel.

Q. Now, when they arrived in Las Vegas on this occasion, will you state what happened when the plane arrived?

A. Well, there was a bus waiting, and they took us right to the Dunes Hotel.

Q. Did the bus go any other places, to your knowledge? A. No, sir.

Q. Did you pass through the passenger terminal at the Las Vegas Airport? A. No, sir.

Q. Now, did you have baggage with you on this occasion, or not?

A. Well, I did, but, well, some of the other fellows did, some of us stayed overnight.

Q. Were you one of those?

A. Yes. Well, may I change that, I had a bag, but it was a real small one. I carried it with me. It was nothing that I had checked in, or [610] anything.

Q. On other occasions when you stayed overnight at the Dunes Hotel, have you had baggage with you?

(Testimony of Stanley Shechtman.)

A. Yes.

Q. Do you recall what happened to that baggage when you checked in at the Dunes counter in Burbank?

A. At the Dunes counter it was taken to the front of the terminal. We got it at the front of the terminal.

Q. When you checked in to take the flight to Las Vegas, what happened to the baggage, if you recall?

A. Well, they took the baggage at the desk, and we got it at the hotel.

Q. Did you ever see it at the Las Vegas Airport?

A. No.

Q. Now, referring to the occasions before last Tuesday when you went to the, when you took the Dunes Magic Carpet Tour, on each of those occasions did you receive a limousine service from the airport in Las Vegas to the Dunes Hotel?

A. Yes, sir.

Q. On each of these occasions where did the bus go when it left the Las Vegas Air Terminal?

A. To the hotel.

Q. Did it go any other place, to your knowledge?

A. No, sir.

Q. Did you observe whether the other people on the [611] aircraft, were there other people on the aircraft with you on each occasion?

A. Yes, sir.

Q. Can you state to the Examiner whether or not these other people—strike that.

(Testimony of Stanley Shechtman.)

What these other people did when they arrived at the airport in Las Vegas?

A. They all got on the bus. I believe they were checked over at the desk, you know, as they went in, not checked off, excuse me, they were told by some gentleman as they got in, you know, the host, or something, to get in the bus, and they will take them right to the hotel.

Q. To the best of your knowledge, had each of the persons on that aircraft gotten on the bus when you arrived in Las Vegas?

A. To the best of my knowledge, yes, sir.

Q. What happened to these persons when you arrived at the Dunes Hotel on the bus, or limousine?

A. They went into the hotel, that I know of.

Q. Do you know what charge, if any there is for the air transportation on the Dunes Magic Carpet Tour?

A. None.

Q. Have you ever been charged for air transportation on the Dunes Magic Carpet Tour?

A. No. [612]

* * *

JOHN C. ALLEN, JR.

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ginsburg:

Q. Will you state your full name for the record, please.

A. John C. Allen, Jr.

(Testimony of John C. Allen, Jr.)

Q. Mr. Allen, by whom are you employed?

A. Catalina Pacific Airlines.

Q. Where do you perform your duties?

A. Los Angeles International Airport, sir.

Q. What is your title?

A. Station manager.

Q. How long have you been employed by Catalina?
A. One year.

Q. When did you commence your employment?

A. I believe it was January 12, 1958, about 1959.

Q. Will you state what your duties are at Catalina?

A. I supervise and perform among other things the checking in of Dunes Hotel guests, the handling of their baggage across the counter onto the aircraft, the issuing of Dunes Hotel Tour tickets. It is also a function of [617] myself and my office to ascertain that those boarding the Dunes Hotel Magic Carpet Flight are valid guests of the Dunes Hotel.

Q. Do you have any duties with respect to manifests?

A. Yes, sir, we receive a manifest by phone from the Dunes Hotel office in Burbank, and use that for checking in the passengers.

Q. Do you have any duties with respect to dispatching the flight?

A. Yes, sir, that is also part of my duty.

Q. Now, do you issue any Dunes Magic Carpet Tours, I believe you indicated you did, is that right?

A. Yes.

(Testimony of John C. Allen, Jr.)

Q. Will you explain the procedure for issuing the tour coupons?

A. Well, in most cases, the manifest is called to us by the Burbank office of the Dunes, the names are taken down and typed. The tour that they hold is noted. When the passenger arrives at the ticket counter, if he is not already holding a tour ticket, we will issue one against the particular type of tour that he has.

Q. What type of tours are there?

A. There is the one-night tour, the two-night tour, the three-night tour, and so forth, and an evening tour.

Q. Now, referring to the one-night tour, and two-night [618] tour, and tours for more than two nights, for that matter, where you are issuing the tour coupon book, is the Dunes Hotel guest required to, or does he pay for anything?

A. Yes, he pays for his room, plus the services offered on the tour.

Q. Can you state for the record whether or not there is any charge for the air transportation?

A. There is none.

Q. Now, is there a time when the guest of the Dunes Hotel who is on a one-night tour, or two-night tour, or for more than two nights, is there a time when he must pay for the room at the Dunes Hotel?

A. Yes.

Q. When must he pay for it?

A. Prior to boarding the flight.

(Testimony of John C. Allen, Jr.)

Q. Now, do you ever sell the Dunes Magic Carpet Tour to guests of the hotel?

A. Occasionally, very infrequently.

Q. Could you give us any more exact idea of how frequently you might do that?

A. Oh, possibly once a week, something like that, maybe twice; as I said, very infrequently.

Q. Have you ever had a request—strike that, please.

Do you ever receive requests for the Dunes Magic Carpet Tour over the telephone? [619]

A. Occasionally.

Q. Have you ever had a request from anyone for air transportation to Las Vegas that want to purchase it from you? A. Also occasionally.

Q. How have you handled these requests?

A. We would advise the individual making the request that if they wished to be guests of the Dunes Hotel we could refer them to the Dunes Hotel office at Burbank for information and reservations, but that would be the only circumstances under which we would be able to handle it.

Q. Have you ever accepted anyone, or sold transportation to anyone on the Dunes Magic Carpet Tour? A. Transportation as such?

Q. Yes? A. No, sir.

Q. What is your answer? A. No, sir.

Q. Now, you receive inquiries — strike that, please.

Have you ever received inquiries over the tele-

(Testimony of John C. Allen, Jr.)

phone for the Dunes Magic Carpet Tour where the person calling wants a room reservation at the Dunes? A. Yes, sir.

Q. What do you do with those instance?

A. We give them the Dunes Hotel, the number of the [620] Dunes Hotel office here in town, either Burbank Airport or in some cases if it is more convenient for them, the Beverly Hills office.

Q. Now, referring to the summer of 1959, have you ever handled any of those calls yourself rather than referring them?

A. Not calls as such, no.

Q. Well, have you ever had any requests for room reservations at the Dunes in connection with a Dunes Magic Carpet Tour that you handled yourself?

A. Yes, sir, over the ticket counter, occasionally someone would come up and request information.

Q. In those instances have you called the Dunes Hotel?

A. Yes. That is our procedure, we call the Dunes Hotel and ascertain if there is room available at the hotel for the passengers, and if so, if we receive a confirmed reservation, we will reconfirm it to the passenger.

Q. Have there been any other instances where you have been unable to confirm room space?

A. Yes, sir.

Q. When did these occur?

A. Mostly last summer when there was quite a

(Testimony of John C. Allen, Jr.)

bit of business in Las Vegas, primarily over the summer week ends, and so forth. [621]

Q. On those occasions when you could not confirm space, what did you do with the person inquiring at your counter, what did you tell them on those occasions?

A. They were advised that since they were not guests of the Dunes Hotel they could not be accommodated either on the flight or at the hotel.

Q. Did those people board the Dunes Magic Carpet Tour? A. No, sir.

Q. Did you handle these matters that you have just referred to personally? A. I have, yes.

Mr. Ginsburg: I would like to have marked for identification as Respondent's next Exhibit in order, I believe it is 4.

Examiner Walsh: Exhibit 4 is your next number, yes.

Mr. Ginsburg: Two books entitled Dunes Hotel Guest Register. The first book is entitled Dunes Hotel Guest Register, and the second book Hotel Register Guests of Dunes Hotel.

Examiner Walsh: They will be marked for identification.

Mr. McCollam: Would that be Respondent's 4-A and 4-B, for convenience? [622]

Examiner Walsh: Yes, Respondent's 4-A and 4-B for identification.

(Respondent's Exhibits 4-A and 4-B were marked for identification.)

(Testimony of John C. Allen, Jr.)

Q. (By Mr. Ginsburg): Mr. Allen, I show you Exhibit our 4-A and our 4-B, for identification, and ask you to examine them, please. A. Yes, sir.

Q. Can you state for the record what these documents are?

A. These are Dunes Hotel guest registers which were maintained at the ticket counter at Los Angeles International Airport.

Q. Were these registers, hotel guest registers maintained under your supervision and control?

A. Yes, sir.

Q. Now, can you tell me how you used these guest registers, what you do with them?

A. Well, they are placed on the ticket counter at check-in time, and each guest of the Dunes Hotel is required to sign the register prior to boarding.

Q. By looking through these exhibits for identification, can you observe the signatures of the individuals who boarded at the the Los Angeles Air Terminal? [623] A. Yes.

Q. In addition to signing their names, what else did they do?

A. They placed their address, and the date which they boarded is also placed on the page they sign.

Q. Now, have any of the individuals ever inquired as to what this document is before signing it?

A. We have had occasional inquiries, yes.

Q. What have you told the people that made such inquiry?

A. We advise them that since they are guests of the Dunes Hotel, at this point in the tour that they

(Testimony of John C. Allen, Jr.)

are required to sign the Dunes Hotel guest register, and that this is that register.

Q. Now, to the best of your knowledge, has any one person refused to sign these? A. No.

Q. To sign this register?

A. Never had anyone.

Q. Now, Mr. Allen, there is testimony in this proceeding by an individual by the name of Mr. Fuson, I believe, of Bonanza Airlines who testified that in September of 1959, he purchased a Dunes Magic Carpet Tour at the Los Angeles Airport, and he also testified that it was just before the time the aircraft was going to depart. I will [624] ask you if people have ever checked in under those circumstances?

A. Yes, they have.

Q. For the Dunes flight. I will ask you to state for the record whether or not under the circumstances indicated, just before the flight time, that whether or not such people would sign the guest register?

A. They would normally do so, however, it is possible that in haste the last moment, and so forth, we sometimes folded this up and put it away, as we are closing our pouch, and if someone would come to the desk after that, we would overlook having them sign the guest register, yes.

Q. Now, with the exception of cases such as this where you might have overlooked at the last minute having the person sign the guest register, what is your testimony with respect to the guests of the Dunes Hotel signing that register?

(Testimony of John C. Allen, Jr.)

A. They are required to do so, and we require them to do so, and I would say that with very rare exception, except as you brought out, all guests would have signed the register.

Q. Now, Mr. Allen, what group of persons do you accept on the aircraft?

A. Guests of the Dunes Hotel.

Q. Is there any way for you to ascertain whether a person is a guest of that hotel before they board the [625] aircraft?

A. In the circumstances where a passenger is holding room reservations at the Dunes, of course, that is obvious. Also, if they have purchased a tour ticket for activities at the Dunes Hotel, this would seem to indicate it. Also having them sign the guest register, and indicating, that is, a guest register of the Dunes Hotel, and, of course, the tour is advertised as a Dunes Hotel tour.

Q. Is there any restriction that you know of in the advertising?

A. No, none other than the passengers must be guests of the Dunes Hotel.

Q. There is that restriction, is that right?

A. It is my understanding, yes.

Q. Where are the benefits contained in the flight package, where are most of those received?

A. At Las Vegas.

Q. Where? A. Dunes Hotel.

* * *

(Testimony of John C. Allen, Jr.)

Cross-Examination

By Mr. McCollam:

Q. When people make inquiries about signing the register, you say occasionally you have people ask you about [626] it, what is your, what generally happens, you put the person's name on a manifest, and you tell them to sign the book, or what?

A. Well, the manifest is received internally by us over the phone, and then is placed on our ticket counter, and as the passenger checks in we verify the fact that his name is there, the type of tour he holds, whether or not he requires ticketing, handle his baggage, and so on and so forth. When we are about through with that, we request that he sign the Dunes Hotel guest register, which is placed facing him on our ticket counter.

Q. And then occasionally people ask you what it is?

A. They will just say, why do I have to sign this, or something like that.

Q. What do you tell those people, Mr. Allen, if they ask you, do they have to register at the Dunes Hotel?

Mr. Ginsburg: I object, that isn't what they said. The witness has indicated what they say.

Mr. McCollam: I know, but sometimes people might ask you if they have to register at the Dunes Hotel, do they ask you that, these evening tour passengers?

A. I don't know if that is a specific question that

(Testimony of John C. Allen, Jr.)

has been asked me, no. I would feel that generally I were asked, why do I have to sign this book, just in sort of a general area. [627]

Q. (By Mr. McCollam): Is there anything to indicate that this book is maintained at the Los Angeles International Airport?

A. Nothing actually, I have my writing on many pages here, and the heading, and so forth.

Q. You have your writing there, will you show me where your writing is?

A. This would be one of mine here (indicating).

Mr. Ginsburg: Let the record show that the witness is referring to Exhibit R-4-A, dated September 23, 1959, to the heading on that page, where it says, "Guests," and then the date, and written in 9/23/59, the name typed in, and written in the witness' handwriting, Dunes Hotel, is that correct?

The Witness: Yes, sir.

Q. (By Mr. McCollam): Is there any place else on that page that your writing appears?

A. No, sir, no. I just head up each page prior to having the passengers sign it. That is mine also, I believe (indicating).

Q. (By Mr. McCollam): Mr. Allen, barring the incidents where somebody came in at the last minute and you wrote out a ticket, this would be, this register would be a list of all the passengers who boarded the Dunes Flight at Los Angeles International [628] Airport?

A. It should be with some exception, there was just about the time, you see, I don't know if it is in

(Testimony of John C. Allen, Jr.)

this one or not, just about the time I started Los Angeles, about a year ago.

Q. Yes, that would be back in January?

A. January, 1959, it was requested that we at Los Angeles have this guest register filled out. I was not in full charge at that time of the station. The gentleman that was saw fit to disregard these instructions, so that there is a lapse in here because of his disregarding it, that we don't have everything. But when the situation was explained to us, and we recognized it, and so forth, from that point on we have faithfully performed this.

Q. Who was, you say, that explains this to you?

A. It was a gentleman by the name of Ted Parvin that is no longer connected with Catalina Airlines, and was at that time, he worked on Catalina Island, actually, and I was being broken in by him into the position.

Q. So—— A. P-a-r-v-i-n.

Q. We should be able now to pick up most of the names that appear on this manifest that is dated 3/24/59, origination LAX, and destination Las Vegas, is that correct?

A. Depending on the particular date, it may have been [629] when we weren't doing it.

Q. You said you were in charge starting in January, isn't that correct?

A. Yes, but I say that some time after that the situation was brought to our attention and corrected.

Q. All right. Now, when was that?

(Testimony of John C. Allen, Jr.)

A. I would say it was about July of, June or July of 1959.

Q. Prior to that time then this book——

A. Was somewhat spotty, yes, it is not an accurate record.

Q. I notice the dates go from, well, this book appears to have been started on January 19, 1959, is that correct? A. Yes.

Q. And the date when the people registered in this book was January 18, 1959, can you explain to me why the book was started a day after the people signed it? A. No, I can't.

Q. You don't know that? A. No.

Q. Now, the next date is January 30, that is part of the spottiness that you were talking about, is that right? A. That is correct, yes.

Q. Then there is a skip from February 3rd [630] through February 9th.

Mr. Ginsburg: Object to that, there is a skip after February 3rd until February 8th, if we are going to put it in the record, let us put it in the way it is.

Examiner Walsh: Let us check it for accuracy.

Mr. McCollam: I read it nine, Mr. Ginsburg, are you right, or am I right?

Mr. Ginsburg: You said there is a skip from February 3rd through January 9, there is an entry here for the 3rd of February, there is an entry here for the 9th of February. If there is any omission, it is between those dates.

(Testimony of John C. Allen, Jr.)

Mr. McCollam: You have made it very clear, Mr. Ginsburg.

Mr. Ginsburg: That was my objection.

Examiner Walsh: Your answer to that was yes?

The Witness: Yes.

Q. (By Mr. McCollam): The next entry is the 16th? A. Yes.

Q. Do you recall whether or not there were any passengers between——

A. I would assume there were passengers.

Q. I show you the page that is dated July 8th, 1959. A. Yes. [631]

Q. And I show you the reverse side of that page, and it looks to me as if it is July 2nd, 1959.

A. Well, there is a possibility, let's see, there is a possibility then when this goes from 6/23 here to 7/2, there is a possibility that someone may have turned over two pages instead of one when they started the second, and then we discovered the error, and we went back and filled that in.

Q. I see. But from June 23rd your next entry you see is——

A. No, actually the second of——

Q. And then go back to pages of July 6th?

A. Yes.

Q. Then the next page is July 8th?

A. That is right.

Q. Then we come to July 2nd. Can you tell me when this book started to be kept?

A. I would say right in this area, from probably the 6th of July on would seem to be most accurate

(Testimony of John C. Allen, Jr.)

time. 12, 13, 13, 14, 15. As I said, this was when we were first apprised of the importance of this, and a definite point was made to my office about it, and I myself and my office understood the importance of it, and we kept it henceforth.

Q. When did you understand the importance of it, that is what I want to get, is there any way you can tell [632] from here?

A. I would say at the point wherein we started to keep the record accurately, that would be the best of my recollection.

Q. Did anyone in impressing the importance to you, tell you that a complaint had been filed by the Civil Aeronautics Board?

A. No, sir, not to my recollection.

Q. No one told you?

A. Not to my recollection, no.

Q. I want to make sure of this, nobody told you anything about a complaint that was filed on June 15, 1959, against the M & R Investment Company and the Catalina Air Transport, nobody told you anything about that? A. I don't recall it.

Q. But it is your testimony though that it was impressed upon you about July?

A. I would say possibly July 5th or 6th.

Q. July 5th or 6th this book had to be kept right up, is that right? A. That is right. [633]

* * *

(Testimony of John C. Allen, Jr.)

Redirect Examination

By Mr. Ginsburg:

Q. Now, prior to July 6, 1959, when you stated that you vigorously registered each of the guests of the Dunes Hotel, and had them sign this register book, what kind of terms were the personnel in your office on with the Dunes Hotel personnel?

A. At the time I took over the station in January they were on particularly good terms individually among themselves, the personnel of the station.

Q. Can you state how you and the other personnel, let's say regarded the registration of the guests of the Dunes Hotel in the hotel register book at the Los Angeles Air Terminal, what type of a duty you regarded that as?

A. Unnecessary and somewhat of an inconvenience, I would say.

Q. And then commencing in June or July of 1959, has your attitude on that matter changed?

A. Yes. [640]

* * *

JACK EISEN

resumed the stand, having been previously duly sworn, and testified further as follows:

Further Direct Examination

By Mr. Ginsburg:

Q. Now, Mr. Eisen, you previously testified regarding your duties and employment, however, I am going to ask as best you can, the date you were first employed by the Dunes Hotel?

A. I would say approximately March 15, of 1959.

Q. You have been employed continuously by the Dunes Hotel since that time? A. Yes, sir.

Q. Now, will you state for the record, Mr. Eisen, who is eligible to board the Dunes Magic Carpet Flight? A. Just guests of the Dunes Hotel.

Q. You undertake to ascertain whether persons seeking to board that flight are guests of the Dunes Hotel? A. Yes, sir.

Q. And your duties and activities are limited to what area? [642] A. Los Angeles.

Q. And in particular where do you perform your duties? A. Burbank.

Q. Now, can you state for the record so there is no—

Well, at this time, Mr. Examiner, I would like to have marked for identification what purports to be a Dunes Magic Carpet tour booklet as Respondent's Exhibit No. 5, for identification.

Examiner Walsh: It will be so marked.

(Respondent's Exhibit No. 5 was marked for identification.)

(Testimony of Jack Eisen.)

Q. (By Mr. Ginsburg): Mr. Ginsburg, I show you Respondent's Exhibit No. 5, for identification, and ask you to examine it, please. Have you examined Respondent's Exhibit No. 5? A. Yes, sir.

Q. Will you state, no, strike that, please.

Is this a Dunes Magic Carpet tour book of coupons? A. Yes, sir.

Q. Now, will you state for the record, Mr. Eisen, what the Dunes Magic Carpet tour comprises or includes?

A. It includes the limousine service, buffet dinner, one cocktail in the Sinbad Lounge, guarantee show reservation, and one cocktail. [643]

Q. Anything else?

A. The limousine service back to the airport in Las Vegas, baggage handling, and a front desk receipt to show that the room is paid for.

Q. Now, does the tour also include any benefits that are given on board the aircraft?

A. Pardon me?

Q. Was anything furnished to the passenger?

A. Champagne en route.

Q. What is the cost of this tour, Mr. Eisen?

A. The evening tour \$29.95 on Fridays, Saturdays and holidays, and \$19.95 Sunday through Thursday.

Q. Now, that \$29.95 charge, of that charge is there any charge imposed for air transportation?

A. None at all, sir.

Q. Now, Mr. Eisen, is one of your duties to as-

(Testimony of Jack Eisen.)

certain that people purchasing the Dunes Magic Carpet tour in fact are guests of the Dunes Hotel?

A. Yes, sir.

Q. How do you go about ascertaining that, Mr. Eisen?

A. By phone conversation with the guest when he calls up for his reservation, and if a reservation is made he either comes out to the Lockheed Air Terminal in Burbank, or in Beverly Hills, the Beverly Hills office and picks up his tickets, or he picks them up, if it is inconvenient [644] for the guest to pick up his ticket prior to boarding his flight, he will mail in the check, or pick it up the day of the flight.

Q. Now, are some of the guests, do some of the guests remain overnight in Las Vegas?

A. Yes, sir.

Q. Now, in connection with the guests who are going to remain overnight, are there any conditions attached to their purchasing the Dunes Magic Carpet tour?

A. Yes, sir, he has to purchase a room for the evening at the Dunes Hotel.

Q. Is there a time when this room must be paid for?

A. Yes, sir.

Q. When is that?

A. Before leaving the airport.

Q. Is that before or after, or during, or when is it in relation to the time of the flight?

A. When he checks in for his flight.

Q. Is it before, during or after the flight?

A. Before.

(Testimony of Jack Eisen.)

Q. Now, you also have tours which do not include a room, overnight room reservation, or room at the Dunes Htel? A. That is right.

Q. What do you call those tours?

A. The Magic Carpet Evening Tour. [645]

Q. Now, will you state for the record what means you have of ascertaining that persons requesting or obtaining that tour are guests of the Dunes Hotel?

A. They have seen our ads in the newspapers where it shows that only guests of the Dunes Hotel are permitted to purchase that evening tour package.

Q. Yes.

A. They are told that when they called in for reservation, they accept the ticket with that understanding, they sign the guest register book that I have out on the counter before checking in for the flight.

Q. Now, will you state in this connection where the benefits, or some of the benefits that you have referred to are available to persons who have acquired the Dunes Magic Carpet Tour, and I show you Respondent's Exhibit 5 in that connection?

A. The guests receive this ticket upon payment of the Magic Carpet Tour. They receive all the benefits indicated on the ticket.

Q. Where do they receive the buffet dinner?

A. At the Dunes Hotel in Las Vegas.

Q. Where to they receive the cocktail in the Sinbad Lounge? A. Dunes Hotel in Las Vegas.

Q. Where do they receive, where do they see a show, [646] and have a cocktail in the Arabian

(Testimony of Jack Eisen.)

Room? A. Dunes Hotel in Las Vegas.

Q. Where do they receive the Dunes special gold label champagne?

A. At the Dunes Hotel in Las Vegas.

Q. Where do they obtain the limousine service from the Dunes Hotel to the Las Vegas Airport?

A. At the Dunes Hotel in Las Vegas.

Q. Now, I ask you with respect to Respondent's Exhibit 5, is this the type of tour booklet or ticket that you used in connection with the Magic Carpet Tour? A. That is the only one I know of.

Q. And it is that, is that right?

A. That is right.

Q. Is it currently in use?

A. Yes, sir. [647]

* * *

Q. Now, Mr. Eisen, in connection with your duties at the Lockheed Air Terminal, do you receive inquiries over the telephone, calls over the telephone? A. Yes, sir.

Q. Have you ever received an inquiry from someone who had a reservation, room reservation at the Dunes Hotel, and who requested free air transportation, but, without purchasing the Dunes Magic Carpet Tour? A. No, sir.

Q. Have you ever heard of any such an inquiry?

A. Yes, sir.

Q. From whom did you hear it?

A. From Miss Stein in our Beverly Hills office.

Q. Miss Stein in the Beverly Hills office. When did Miss Stein contact you about this?

(Testimony of Jack Eisen.)

A. I believe it was about the beginning of December.

Q. Of what year? A. Of '59.

Q. What did Miss Stein say to you at that time?

A. She had a guest who said he had a room reservation [648] at the Dunes Hotel, and wanted to go up on our flight and go to the Dunes Hotel as a guest without purchasing the evening tour package.

Q. What did you say to Miss Stein on that occasion?

A. I told Miss Stein to check with our reservation office at the Dunes Hotel in Las Vegas, and if they are holding a room for this gentleman or woman or whoever it might have been, and if it is a paid reservation, confirmed in Las Vegas, that we will accept them on our flight as a guest of the Dunes Hotel.

Q. Now, have you ever had an inquiry from anyone requesting air transportation to Las Vegas?

A. Yes, sir.

Q. Have you received more than one of these inquiries? A. We have had a few, yes, sir.

Q. Do you have any policy with regard to such inquiries? A. Yes, sir.

Q. What is that policy?

A. We tell the person calling us, if it is on a phone, we give them a phone number which is Lockheed Air Terminal switchboard Thornwall 2-5231 and ask for Pacific Airlines, TWA, United and Western who do sell transportation to Las Vegas.

(Testimony of Jack Eisen.)

We don't sell transportation. We suggest they call the airline that sells transportation.

Q. I will ask you, Mr. Eisen, whether you have ever [649] accepted anyone for transportation, anyone on the Dunes Magic Carpet Tour who was merely seeking transportation to Las Vegas, as best you know? A. Absolutely no.

Q. Can you state, Mr. Eisen, where the Dunes Magic Carpet Tour can be purchased, what area?

A. Los Angeles, sir.

Q. Can it be purchased in Nevada, in Las Vegas?

A. No, sir. [650]

* * *

Q. Mr. Eisen, I show you Respondent's Exhibit No. 2, for identification, and ask you to examine it?

A. Yes.

Q. I show you Respondent's Exhibit 6-A, B and C, for identification, and ask you to examine those also, have you examined those exhibits, Mr. Eisen?

A. Yes.

Q. Will you state what these four exhibits are?

A. These are the official guest registration books for the Dunes Hotel.

Q. Where are they maintained?

A. Lockheed Air Terminal in Burbank.

Q. Are they maintained under your supervision and control? A. Yes, sir.

Q. Do you make any use of these books, these guest registration books in connection with your duties at the Lockheed Air Terminal?

(Testimony of Jack Eisen.)

* * *

The Witness: Yes, they are part of the checking in of the passenger when he checks in at the counter, he signs the official guest register book. [651]

Q. (By Mr. Ginsburg): Will you just describe when the register book is made available, or given to the guest for signature?

A. It is out on top of the counter, the minute he comes up to the counter, and we ask him his name, and see that he is on our flight, and we ask him to sign the guest register book.

Q. Is there any sign maintained on the counter which pertains to these books? A. Yes, sir.

Q. What does that sign state?

A. All guests must sign register book.

Q. Have any guests ever asked why, or what that book is?

A. Well, the sign actually tells them, and they will ask while they are signing their name.

* * *

Q. Has any guest ever asked what this book, guest register book is, that you can recall?

A. No, sir.

Q. Have you ever had a guest who refused to sign this [652] book? A. No, sir.

Q. What part or portion of the guests do sign this book? A. All of them.

Q. Now, is that true during the entire course of your, during the entire time of your employment

(Testimony of Jack Eisen.)

with the Dunes Hotel? A. As far as I know.

Q. Have you given instructions to the—do you have people working for you? A. Yes, I do.

Q. How many people work for you?

A. Two.

Q. Do you give them any instructions with respect to these books? A. Yes.

Q. What are they, what are the instructions?

A. That all guests must sign the guest book.

Q. Now, Mr. Eisen, from whom do you take instructions or orders? A. Mr. Riddle.

Q. Mr. Major Riddle? A. Yes, sir.

Q. President of the Dunes Hotel? [653]

A. Yes, sir.

Q. Has Mr. Riddle ever given you any orders or instructions with respect to the Dunes Magic Carpet Tours? A. Yes, sir.

Q. Has Mr. Riddle ever stated to you who is eligible to take the Dunes Magic Carpet Tours?

A. Yes, he has.

Q. What did Mr. Riddle say to you in that connection?

A. Just guest of the Dunes Hotel only.

Q. When did Mr. Riddle give you those instructions?

A. The first day I ever met Mr. Riddle when I was hired.

Q. Where did that conversation take place?

A. That was at the Beverly Hilton Hotel in Beverly Hills.

Q. Did Mr. Riddle indicate to you, or did Mr.

(Testimony of Jack Eisen.)

Riddle state to you why only guests of the Dunes Hotel may be admitted to these flights?

A. Yes, sir.

Q. What did Mr. Riddle say?

A. He explained the situation to me, that it is a losing proposition, and only guests of the Dunes Hotel are entitled to be the guests on our flights.

Q. What did Mr. Riddle say was a losing proposition?

A. The package that we sell to the guests [654] of the Dunes Hotel.

Q. Did Mr. Riddle say why this service was offered since it apparently is operated at a loss?

A. Well, it was a convenience for the guests of the Dunes Hotel.

Q. Now, to the best of your knowledge, are the books that you have in front of you which have been identified as Respondent's Exhibit 2; 6-A, B and C, to the best of your knowledge, are these all of the Dunes registers which have been maintained at the Lockheed Air Terminal?

A. As far as I know up to the time, up to the present time since I started.

Q. What is done with these Dunes Hotel guest registers after they have been completely filled out?

A. They are kept on file as an official record for the Dunes Hotel.

Q. Now, do any of the Dunes Magic Carpet tour guests have luggage when they come to the counter at Burbank? A. Yes, sir.

(Testimony of Jack Eisen.)

Q. Can you say for the record how their luggage is handled?

A. When the guests arrive at Burbank, either carrying their own luggage or they may have the redcap service that brings it over, we put it on the scale, see if the guest is a registered guest at the Dunes Hotel. We take his [655] baggage and we give him the baggage tag, and the baggage is tagged and put on the baggage cart to be boarded on the flight.

Q. Do you know where the baggage is placed on the flight? A. Yes, sir.

Q. Where?

A. In the baggage compartment of the airplane.

Q. Is that separate from the passenger compartment? A. Yes, sir.

Q. Now, are these guests permitted to carry on baggage or luggage?

A. No, sir, just cosmetic case perhaps, but it is all weighed in.

Q. In addition to guests who may be traveling on the flight, persons who may be on the flight, is anything else carried on the Dues Magic Carpet Tour, or has anything been carried from time to time?

A. Yes, sir.

Q. What else?

A. Well, we have had costumes, sheet music, turkeys, we had purses sent up.

Q. Where were they sent to?

A. To the Dunes Hotel.

(Testimony of Jack Eisen.)

Q. Are all of these items that you referred to, have [656] they all been sent there?

A. Yes, sir, it all belongs to the Dunes Hotel.

Mr. Ginsburg: Mr. Examiner, I would like to have these designated as Respondent's Exhibit No. 7 for identification what purports to be a passenger manifest dated January 10, 1959.

(Respondent's Exhibit No. 7 was marked for identification.)

Mr. McCollam: I have seen it, Mr. Ginsburg.

Q. (By Mr. Ginsburg): Mr. Eisen, I show you Respondent's Exhibit No. 7, for identification, and ask you to examine it, please.

Have you examined it, Mr. Eisen?

A. Yes, sir.

Q. Will you state for the record what this document is, please?

A. It is the manifest for the flight of Sunday, January 10th, 1959.

Q. Is that the Dunes Magic Carpet Tour?

A. Yes, sir, it should be 60 rather.

Q. 1960. This document is, well, is this the right date on the document? A. No, sir.

Q. What is the correct date?

A. January 10, 1960.

Q. When was this particular flight [657] operated? A. Sunday, January 10, 1960.

Q. Was this manifest prepared under your direction and supervision, Mr. Eisen?

A. Yes, it was.

(Testimony of Jack Eisen.)

Q. Is it true and correct to the best of your knowledge and belief? A. Yes, sir.

Q. Now, Mr. Eisen, do you have any, do any part of your duties cause you to be in contact with Catalina Air Transport at Los Angeles International Airport? A. Yes, sir.

Q. Can you state what your duties are which concern Catalina Air Transport?

A. Yes, sir. We type our manifests. We have passengers boarding at Catalina Pacific Airline counter at Los Angeles International Airport, and we call in the manifests of the guests of the Dunes Hotel that are checking in at their counter, and we give them all the names. And, if it is an evening tour, one-night tour, two-night tour, or a three-night tour, whatever it might be, and they have all that information when the guests check in at their counter.

Q. Now, where in Los Angeles is the Dunes Magic Carpet Tour sold, to the best of your knowledge?

A. At the Beverly Hills office and at Lockheed Air [658] Terminal in Burbank.

Q. Is it sold at Catalina counter at Los Angeles Airport?

A. No, sir, we don't have any salesmen there at all.

Q. Is it possible under some circumstances that it might be sold there? A. Yes.

Q. Would you relate what those circumstances are?

(Testimony of Jack Eisen.)

A. If they had somebody that walked up to their counter and asked about the Dunes Magic Carpet Flight Tour, they will call me on the phone at Burbank and ask me if we can accommodate this particular person who is checking on a reservation to go to the Dunes Hotel, and I will give them a yes or no answer, and give them all the information, or they will have the guest call me on the phone, or hand the phone to him and let him talk to me about it, and I will then in turn talk to either Jack Allen or whoever might be at the Catalina Pacific Airline counter, and tell them exactly how to handle it.

Q. Is your business with the people at the Catalina counter at the Los Angeles International Airport, is it ever concerned with room reservations at the Dunes Hotel?

A. No, sir, they have nothing to do with it at all. [659]

* * *

Q. What travel agency in Los Angeles can get through you free transportation for people that it has made reservations at the Dunes Hotel for? [666]

A. Is that room reservations, sir, that you are pertaining to?

Q. Room reservations, yes.

A. Anybody can get free transportation to the Dunes Hotel in Las Vegas if the guest has a confirmed room reservation in Las Vegas. [667]

* * *

(Testimony of Jack Eisen.)

Q. There aren't any restrictions on these evening tour passengers coming back several days later, are there any restrictions?

A. Yes, sir. When we sell the evening tour, we show the return as the following morning.

Q. You have a reminder on your ticket which says——

A. Well, the ticket actually shows return date.

Q. I mean, on the coupon, I won't use the word ticket?

A. We show the return date on it, when someone shows the evening tour, we show the return the following [673] morning at 3:00 a.m., and they are supposed to come back.

Q. It says on there also, failure to return on the above-return date automatically places you on a space available basis, isn't that correct?

A. That is correct, sir.

Q. The people can come back, can they not, on a space available basis?

A. If there is space available, I presume. I don't have anything to do with that end of the tour, sir. I just get them up there on my flight package, and I show the correct information on the ticket, on the Magic Carpet Flight ticket. [674]

* * *

(Testimony of Jack Eisen.)

Redirect Examination

By Mr. Ginsburg:

Q. Mr. Eisen, what instructions do you give to your employees regarding the guests of the Dunes Hotel signing the guest register?

A. That every guest that checks in for the package must sign the guest book. It is as important as collecting their money.

Q. You tell that to the people who work for you, is that right? [678] A. Yes, sir.

Q. And, from time to time, do you check to see if they are fulfilling their responsibilities with respect to the guest register?

A. Yes, sir, I stand out there and watch it closely.

* * *

Q. Now, Mr. Eisen, I ask you who, what individual employed by the Dunes Hotel maintains the Dunes Hotel registers which are identified as Exhibits R-2 and R-6?

A. The Burbank office of the Dunes Hotel.

Q. Who is in charge of that office?

A. I am, sir.

Q. Do you maintain these books?

A. Yes, sir.

Q. Do you retain them as official records of the Dunes Hotel? A. I do. [679]

* * *

(Testimony of Jack Eisen.)

Now, if you determine that a person has a confirmed reservation to the Dunes Hotel, did I understand you to testify that you will provide him free transportation between Los Angeles and Las Vegas without having to buy the tour?

The Witness: If it is confirmed in Las Vegas at the Dunes Hotel. [680]

* * *

Further Recross-Examination

By Mr. McCollam:

Q. Well, I have just one question, Mr. Examiner, and that is this, you say you will provide the free transportation to people who have made reservations at the Dunes Hotel for rooms, but, as a matter of fact, you have only on one occasion done that, isn't that correct?

A. That is all, yes, sir. [681]

* * *

Examiner Walsh: Exhibits Respondent's 5 and Respondent's 7 for identification are received.

(Respondent's Exhibits No. 5 and No. 7 for identification were received into evidence.)

* * *

Mr. Ginsburg: With respect to Exhibits No. 2, for identification, Nos. 6-A, B and C, I will attempt to enter into a stipulation with Counsel for

the Office of Compliance so that it won't be necessary to introduce these physically in evidence because of their bulk, and because they are official records of the Dunes Hotel. I want to retain them. The same is true with respect to the exhibits identified this morning as Exhibits R-4-A, and [682] R-4-B. I haven't attempted to offer those because of the bulk, and the fact we do want to retain these original records, and duplicating them would be quite a burden.

Examiner Walsh: Yes, you can do that before the close of the hearing.

Mr. Ginsburg: Yes. For all intents and purposes, is there any objection to the receipt of these documents in evidence, I wish you would make them now?

Mr. McCollam: No.

Mr. Ginsburg: Fine. I will withhold the offer.

Mr. McCollam: If we can't make out, I don't think we will have any trouble making out a stipulation, Mr. Ginsburg, but, as of the present time, you are submitting them in evidence, and I have no objection to them being offered in evidence. [683]

* * *

MAC NEISEN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ginsburg:

Q. Will you state your full name for the record, please.

A. Mac Neisen, M-a-c N-e-i-s-e-n.

Q. Do you live in the Los Angeles area, Mr. Neisen?

A. I live in the Orange County area.

Q. In California, is that right?

A. Yes, sir.

Q. Are you acquainted with the Dunes Magic Carpet Tour? A. Yes, sir, I am.

Q. Have you ever taken the Dunes Magic Carpet Tour? A. Yes, I have.

Q. When did you last take it?

A. December 30, 1959.

Q. Did you, as a part of that tour, travel by air from somewhere in the Los Angeles area to Las Vegas? [684] A. Yes, I did.

Q. Where did you leave from, Mr. Neisen?

A. I left from Burbank.

Q. Now, Mr. Neisen, on that occasion who were you traveling with at that time?

A. I was traveling with my wife.

Q. When you went to the Lockheed Air Terminal in Burbank were you, or, was your wife shown a hotel guest register?

(Testimony of Mac Neisen.)

A. She was shown a register, and asked to sign it.

Q. Was that in your presence?

A. Yes, it was.

Q. I show you Respondent's Exhibit No. 6, for identification, and ask you if this is the type of book that was shown to your wife on that occasion? A. Yes.

Q. Where was it? Where did you see it?

A. On the front counter.

Q. Was there a sign anywhere near it that you recall? A. I don't recall.

Q. Now, I refer you to a page in this book identified as Respondent's 6-C, with the date in the left-hand column December 30, 1959, and I will ask you to look four lines down, and will you state for the record what name appears there? [685]

A. Mr. and Mrs. Mac Neisen.

Q. Do you recognize the handwriting on that page? A. I do, sir.

Q. Whose handwriting is it?

A. My wife's.

Q. Is there an address shown?

A. Yes, there is.

Q. Is that your address?

A. Yes, it is, sir.

Mr. McCollam: What is the address?

Q. (By Mr. Ginsburg): Now, did you travel on this aircraft to Las Vegas, that is, a part of the Dunes Magic Carpet Tour? A. Yes, sir.

Q. Your wife was with you, is that right?

(Testimony of Mac Neisen.)

A. Yes, sir.

Q. When you arrived in Las Vegas at the airport, will you tell us what happened?

A. We were taken in the limousine to the hotel.

Q. Did you board the limousine?

A. Yes, we did, sir.

Q. Where did the limousine go?

A. To the hotel.

Q. To your knowledge, did it go anywhere else?

A. To my knowledge, no, sir. [686]

Q. What did you do when the limousine got to the hotel?

A. I went in to check into the hotel.

Q. Your wife was with you, I take it?

A. Yes.

Q. Did you at some time along the line receive your baggage? Did you have baggage?

A. Yes, I did.

Q. Going back to the Lockheed Air Terminal, did you do something with that baggage there?

A. I checked it into the office.

Q. When did you next see it?

A. At the hotel.

Q. What hotel is that, please?

A. The Dunes Hotel.

Q. Now, did you stay overnight in Las Vegas on this occasion? A. Yes, I did.

Q. How long did you stay overnight?

A. Four days.

Q. At what hotel did you stay?

A. At the Dunes.

(Testimony of Mac Neisen.)

Q. And when with relation to the time of the flight did you pay for your hotel reservation, your room reservation?

A. My room reservation was prepaid. [687]

Q. It was before the flight, is that right?

A. That is right.

Q. When did you first, how did you first learn of the Dunes Magic Carpet Tour, Mr. Neisen?

A. At one time when I was guest of the hotel.

Q. What hotel was that, please?

A. The Dunes Hotel.

* * *

Q. * * * What do you understand the price of the air transportation of the Dunes Magic Carpet Tour to be? A. None.

Q. Do you know who is eligible to travel on the Dunes Magic Carpet Tour?

A. Guests of the Dunes Hotel.

Q. Now, prior to December, 1959, did you ever attempt to take the Dunes Magic Carpet Tour?

A. I attempted to fly up to Vegas at one time before.

Q. When was that, if you can recall?

A. The second or third week of January, '59.

Q. Did you attempt to contact, or did you contact someone representing the Dunes Hotel?

A. Yes, I did. [688]

Q. How did you contact them, by what means?

A. By phone.

Q. Whom did you contact?

A. I spoke to Mr. Graham.

(Testimony of Mac Neisen.)

Q. What is his first name, if you know?

A. Chris.

Q. What did you say to Mr. Graham, and what did he say to you in this conversation?

A. Well, I asked him if I could get a flight up to Las Vegas, and he asked me if I was going to stay at the Dunes Hotel.

Q. What did you say?

A. And I said, no, I had previous commitment to the Sahara.

Q. What did Mr. Graham say to you?

A. He said he was awfully sorry, he couldn't take me up to Las Vegas.

Q. Did he tell you why?

A. Since I was not a guest of his hotel, the Dunes.

Q. How did you get to Las Vegas on that occasion? A. Drove.

Q. Have you ever taken what we call a commercial airline such as Western or United or TWA, or Bonanza, or Pacific Airlines to Las Vegas?

A. No, sir. [689]

* * *

JOAN STEIN

was called as a witness, and, having first been duly sworn, was examined and testified as follows: [691]

Direct Examination

By Mr. Ginsburg:

* * *

(Testimony of Mac Neisen.)

Q. Where are you employed?

A. With the Dunes Hotel.

Q. Where do you perform your services?

A. Beverly Hills office at 204 North Beverly Drive.

Q. What is your position with the Dunes?

A. I am office manager.

Q. Is that of the office you have just described at Beverly Hills? A. Yes, it is.

Q. How long have you been employed by the Dunes Hotel? A. Since March of '59.

Q. What are your duties, Miss Stein, in connection with your employment for the Dunes?

A. I place room reservations with the Dunes Hotel, Magic Carpet Tour reservations for the Dunes Hotel, and secretary to Mr. Lou Friedman.

Q. Can you state for the record approximately what portion of your time you devote to the Dunes Magic Carpet [692] Tour? A. About half.

Q. Now, is there anyone who works under your supervision? A. Yes.

Q. In connection with your duties pertaining to the Dunes Magic Carpet Tour? A. Yes.

Q. Who is that, please?

A. Miss Estelle Crane.

Q. Do you receive and handle inquiries regarding the Dunes Magic Carpet Tour in the office in Beverly Hills? A. Yes, I do.

Q. By what means do you receive these inquiries?

A. By telephone, and people that may walk in.

(Testimony of Joan Stein.)

Q. Can you state for the record what the tours consist of?

A. The tour consists of cocktails en route on our flight going up to Las Vegas, limousine service being furnished for the customer of the Dunes Hotel, guests of the Dunes Hotel to and from the hotel upon their arrival and departure, seeing our main show with a complimentary cocktail, also their baggage is transported directly from the airport to the hotel. Also we have a cocktail at that main show, and our lounge entertainment with a cocktail, buffet dinner, and a bottle of champagne on the return flight, this is all at the Dunes Hotel.

Q. Thank you. What charge is there for the air transportation on the Dunes Magic Carpet Tour?

A. Sunday through Thursday \$19.95, Friday, Saturday and holidays \$29.95.

Q. These prices you mentioned, what are they for? A. Magic Carpet Evening Tour.

Q. What is the charge for the air transportation on this tour? A. There is no charge.

Q. What is your regular price on the tour—strike that question, please.

Now, do you receive instructions from anyone concerning the Magic Carpet Tour in your functions, in connection with it?

A. Yes, Mr. Lou Friedman.

Q. Can you state to us what Mr. Friedman's instruction to you are?

A. That this free transportation on the Magic

(Testimony of Joan Stein.)

Carpet Tour is available for guests of the Dunes Hotel only.

Q. Have you related these instructions to anyone? A. Yes, I have, Miss Crane.

Q. To whom? A. Miss Crane. [694]

Q. Pardon? A. Miss Crane.

Q. Thank you. Now, with respect to your instructions from Mr. Friedman, has he ever indicated to you why these tours are restricted to guests of the Dunes Hotel?

A. Yes, because we are not in a flight transportation service, and we are not interested in transporting people of other hotels, or wherever they may be staying, just for guests of the Dunes Hotel as a convenience.

Q. Did Mr. Friedman indicate anything to you regarding the profitability of the flights of the Dunes Magic Carpet Tour?

A. We do not work on a, we don't make anything by transporting these people, we work at a loss.

Q. Is that what Mr. Friedman told you?

A. Yes.

Q. Now, have you ever received an inquiry from someone whom you thought might not be a guest of the Dunes Hotel? A. Yes.

Q. Seeking to travel up there on the Dunes Magic Carpet Flight? A. Yes.

Q. When did you last receive an inquiry of this type? [695]

A. The first week of December, '59.

(Testimony of Joan Stein.)

Q. Will you relate what happened on that occasion?

A. Yes. I had a gentleman call me, and he stated that he had a confirmed room reservation at the Dunes Hotel, and was not interested in taking our Magic Carpet Tour, just wanted the flight transportation up and back, and I told him I would be happy to call him back and advise him as to whether or not we could accommodate him.

Q. Did you then contact anyone else?

A. Yes, I contacted Mr. Jack Eisen at the Burbank Airport.

Q. What did you say to Mr. Eisen, and what did he say to you?

A. I related the conversation to him, and he advised me to contact Las Vegas and find out if the room was a confirmed reservation.

Q. If it were, did he make any statement pertaining to this?

A. Yes, he stated that if the room was confirmed that he was to be put on the flight.

Q. Did you contact Las Vegas?

A. Yes, I did.

Q. What did you learn?

A. The room reservation was confirmed for him, and I recall, the gentleman called, we told him we would be happy [696] to accommodate him with the flight transportation up to the hotel.

Q. Do you remember the name of the gentleman?

A. No, I don't.

(Testimony of Joan Stein.)

Q. Do you know whether or not he ever took the Dunes Magic Carpet Tour?

A. He didn't take it, he did not take the flight.

Q. Now, prior to this incident in December, have you ever had an inquiry from anyone where you felt that perhaps he might not be a guest of the hotel? A. Yes.

Q. Was that with respect to the Dunes Magic Carpet Tour, the inquiry? A. Yes.

Q. When did this incident take place?

A. This took place November 7th.

Q. Of what year, Miss Stein? A. 1959.

Q. How were you contacted in this instance?

A. By the telephone.

Q. Do you know the name of the person who contacted you? A. Yes, Mr. Buckley.

Q. Did you have a conversation with Mr. Buckley? A. Yes, I did. [697]

Q. Can you relate that conversation stating what he said, and what you said, to the best of your ability?

A. Mr. Buckley called and asked information about our evening tour, Magic Carpet Evening Tour, and after relating this information to him, I asked him how long he planned on staying with us as a guest of the Dunes Hotel, at which time he stated he did not want to stay at the Dunes Hotel, he was just interested in transportation to and from Las Vegas, and he was going to be staying at a motel.

Q. Did he state that to you?

(Testimony of Joan Stein.)

A. Yes, he did.

Q. What did you then say to Mr. Buckley?

A. I informed him that he would have to check with the commercial airline because we were not a transportation service.

Q. Did you say anything further to him?

A. Yes, I did.

Q. What else did you say?

A. This was a lengthy conversation, it was a lengthy conversation, Mr. Buckley said he would like to buy our evening tour package and plan, Magic Carpet Tour, and not make a return flight, and I told him he would still have to contact a commercial airline because I could not possibly sell him an evening tour, if he was not staying at our [698] hotel.

Q. Did you regard Mr. Buckley as a guest of the hotel?

A. No, he had no intention of staying as a guest of the hotel.

Q. Now, how frequently do you receive telephone calls, or inquiries where you have reason to believe, or where there is some indication that the person is not a guest of the Dunes Hotel, or does not intend to be a guest? A. Very few.

Q. Now, does the Dunes Hotel have a Magic Carpet Tour which includes a room at the Dunes Hotel for one or more evenings? A. Yes.

Q. Do you receive inquiries for tours, one or more evenings involved? A. Yes.

(Testimony of Joan Stein.)

Q. Do you have any policy with respect to such tours—strike that question, please.

In connection with such inquiries, do you have a policy as to whether or not a person is qualified to take the tour? A. Yes.

Q. What is that policy, please?

A. Through formal conversation with the individual over the telephone, or if they happen to be in the office, [699] we question them on how long they plan on staying. We advise them what time their return flight will be, and on what date. Only through this form of questioning can we determine whether they want to actually be a guest of the Dunes Hotel, or whether they want to stay elsewhere. Also——

Q. Excuse me.

A. Also, usually a guest of the hotel, or someone that may be calling in to ask about our Magic Carpet Tour has already read our advertisement.

Q. What does your advertisement state?

A. It states the features of the package, and that this is available for guests of the Dunes Hotel.

Q. Now, when the party is going to stay overnight in Las Vegas, is it necessary for him to make any arrangement for the room?

A. Yes, they must place a reservation.

Q. When does the payment, when is the payment made?

A. Payment is made before the departure to Las Vegas.

Q. Is that a requirement? A. Yes, it is.

(Testimony of Joan Stein.)

Q. And, the confirmed reservation is with what hotel? A. The Dunes Hotel.

Q. Is that only the Dunes?

A. Just the Dunes Hotel. [700]

* * *

CHARLES W. MANN

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ginsburg:

* * *

Q. Who is your employer?

A. The Dunes Hotel, Las Vegas, Nevada.

Q. What is the title of your position?

A. Las Vegas flight director and host.

Q: Do you perform your duties in connection with the tour? A. Those are my duties.

Q. What tour is that, sir?

A. Magic Carpet Tour, Dunes Hotel.

Q. How long have you been so employed?

A. The 30th of January, 1959. [707]

Q. Have you been employed continuously since that time? A. Continuously.

Q. Mr. Mann, I want you to state for the record what your duties are.

A. My duties are to meet the Magic Carpet Flight.

Q. Where do you meet it, Mr. Mann?

(Testimony of Charles W. Mann.)

A. At McCarran Airfield, Las Vegas. Board the airplane, disembark our guests from the airplane.

Q. Excuse me just a moment. When the aircraft reaches the ground and touches down on the ground and taxis to the point wherever it does and stops——

A. Yes, sir.

Q. ——what happens precisely at that moment?

A. I board the airplane before anybody gets off. They have instructions from the stewardesses to remain seated until their host Chuck Mann comes aboard the airplane.

Q. Yes.

A. I meet the guests and inform them that the limousine buses are waiting to take them to the Dunes Hotel, that I will get their return confirmations on the limousine and to follow me. I am their host, Chuck Mann.

Q. What do you do at that moment?

A. I thereby disembark from the airplane, go, lead [708] them straight to the limousine buses that are waiting, stand by the door and see that they get on the buses and after that——

Q. Just a moment, Mr. Mann. A. Oh.

Q. Now, how far approximately is the bus, the limousine bus from the aircraft? How long of a walk do the guests have?

A. From the aircraft approximately 100 feet; from the gate that they go out of, approximately 10 feet.

Q. Where is the airport terminal in relation to this?

(Testimony of Charles W. Mann.)

A. I judge approximately four, five hundred feet from the gate.

Q. Do you go through this lobby? A. No.

Q. Do the guests go through it? A. No.

Q. Now, are there occasions when the guests or a guest does not board the bus?

A. Oh, I have had those occasions when overnight guests have reserved a rental car to be picked up at the terminal. They are allowed, I allow them to go up and pick up their car, naturally; but they are not allowed to receive their baggage any place but the Dunes Hotel itself. [709]

Q. Now, will you continue relating.

A. After boarding the bus and reading off the manifest to get their confirmed reservations back, I disembark from the bus and inform the driver to take the guests to the Dunes Hotel. I then pick up the luggage truck and drive the luggage to the hotel.

Q. Do you go in a separate conveyance?

A. I go in a separate conveyance. I take the luggage in.

Q. Now, what is the next step in the procedure?

A. The bus disembarks our guests at the front door of the Dunes Hotel. Most generally the bus and the luggage get there at the same time.

Q. Who is taking the luggage there?

A. The luggage goes right into the hotel.

Q. Who takes the luggage to the hotel?

A. I do.

Q. Where does the bus go from the airport?

(Testimony of Charles W. Mann.)

A. Directly to the Dunes Hotel.

Q. Where else does the bus go?

A. Nowhere else.

Q. Now, what do the guests do when the limousine bus arrives in front of the Dunes Hotel?

A. Our guests disembark from the limousine at the front door and go into the hotel. [710]

Q. What do you do at that time?

A. I am going to the door at the same time they are. I perform the duties of the host of the Magic Carpet Flight, answer various questions, where is the buffet, what time do the shows start and the biggest question is where is the men's and women's room.

Q. Have you ever seen a guest disembark from the bus and go any place other than the hotel?

A. No, sir.

Q. Are your duties at this point concerned with observing and answering inquiries of the guests of the hotel who have gotten off the aircraft?

A. Those are my sole duties.

Q. Now, what disposition is made of the baggage when you take it to the hotel?

A. The baggage is transferred from the baggage truck to the lobby of the Dunes Hotel by the bellman.

Q. Do any of the guests receive their luggage at the entrance of the Dunes Hotel?

A. No, sir. They are not allowed to pick it up. It is all brought into the lobby. They have instruc-

(Testimony of Charles W. Mann.)

tions not to give anybody the luggage unless it is lined up in the hotel lobby.

Q. Now, have any guests ever questioned you at the airport on arriving at the airport about their luggage [711] or ever asked for their luggage?

A. I have had guests that have been worried where they pick up their luggage. Evidently they didn't hear it announced on the airplane. I tell them the luggage will be at the hotel on their arrival.

Q. Now, over the past years since you have been employed by the Dunes Hotel, how many of these days have you been on duty and how many of these days have you missed these flights?

A. I have never been late for a flight or missed a flight except for nine days since January 30, 1959.

* * *

Q. Did someone substitute for you on those occasions? A. Yes, sir.

Q. Who was that, please?

A. The vice-president of the hotel, Mr. Landy.

Q. Has Mr. Landy ever met any of the flights with you? A. Yes, sir.

Q. Have you advised him as to your procedure to follow? [712]

A. The complete procedure was carried out by Mr. Landy.

Q. As you testified here today, is that correct?

A. Yes, sir.

Q. Now, do you have any rule or regulation

(Testimony of Charles W. Mann.)

about guests carrying on luggage in the passenger compartment of the aircraft? A. Yes.

Q. What is that rule?

A. Nothing over the size of a cosmetic case.

Q. Is that rule observed?

A. It is observed for safety reasons.

Q. Now, Mr. Mann, have you ever had any requests for refunds from guests on the return air transportation from Las Vegas to Los Angeles?

A. Yes, I have.

Q. Do you have a policy in reply to those requests? A. I certainly do.

Q. How have you replied to those requests?

A. I say Mr. or Mrs. so and so, the Magic Carpet Flight is free. So, therefore, there can be no refund.

Q. Have you ever made any refunds under the circumstances?

A. None whatsoever, no, sir.

Q. Now, when do these requests for refunds primarily occur? [713]

A. Primarily in the summer when we have very turbulent flights coming in. The guests don't wish to fly back and would rather take a bus or train.

Q. Have you ever known of any incidents where the guest actually flew up on the Magic Carpet Tour and returned by some other means of transportation?

A. Yes, sir. Not specifically, but there have been cases where they have taken the bus back or a train back because they got sick on the flight up.

(Testimony of Charles W. Mann.)

Q. Do you know of your own knowledge, Mr. Mann? A. Yes, sir.

Q. Now, do you also handle the return Magic Carpet Flight from Las Vegas to Los Angeles and Burbank? A. Yes, sir.

Q. Will you describe the procedure on that, please.

A. Well, our guests are instructed to check in at the flight desk with me for their flight pass a half hour before flight time.

Q. What time do they actually check in? Let's talk about, you have a flight going back early in the morning.

A. Yes, sir. It is scheduled at 3:00 a.m., but there is only one bus, Tanner limousine bus on the graveyard shift, and they are unable to get to the Dunes Hotel until ten minutes after 3:00 at the earliest.

Q. Yes. [714]

A. So, I am checking in the return guests from 2:30 until approximately 3:15, a 45-minute period.

Q. When can the guests pick up their return pass on the aircraft?

A. Half an hour before flight time.

Q. Can they pick it up earlier than that?

A. No, sir.

Q. Where can they pick it up?

A. Only from the flight desk, from myself. I am the only one that operates the flight in Las Vegas.

Q. Continue relating the events surrounding the return flight.

(Testimony of Charles W. Mann.)

A. I pick up their return slip, give them a gate pass and tell them that there will be a flight announcement five minutes before departure, bus departure to load them on the bus.

Q. What happens after that?

A. I give a final announcement, have the operator give an announcement or give a final announcement.

Q. That is the operator there, where?

A. At the Dunes Hotel.

Q. Yes.

A. Over the PA system. I check the bus to see if everybody is aboard the bus that I have checked in on the manifest. [715]

Q. What do you do then?

A. I then inform the limousine driver to proceed to Gate 1, McCarran Field and——

Q. What do you do then?

A. In the meantime I take the luggage truck off with the luggage, outgoing luggage.

Q. Do you meet the limousine bus at the——

A. I meet the limousine bus at McCarran Field and check them through the gate right on the airplane and——

Q. Who do you check through, the guests?

A. The guests. Then I add up the baggage and passenger weight, get my weight and balance from the crew, give them their copies, give the seal up orders and clear right.

Q. What charge is made for the air transportation on the Dunes Magic Tour?

(Testimony of Charles W. Mann.)

A. There is no charge whatsoever, sir.

Q. Have you ever had a request from anybody regarding the using of another person's return pass on the aircraft?

A. Yes, I have.

Q. Do you have a policy in reply to such requests?

A. Yes, sir, I have.

Q. What is that policy?

A. I tell the person in question that the tour is non-transferrable. [716]

Q. Do you permit them to board the aircraft using somebody else's return pass?

A. Not if I know that it is not their pass.

Q. If I related to you that a Mr. Fuson of Bonanza Airlines purchased a Dunes Magic Flight ticket on September 22nd, 1959, and did not take the return flight and did not use the return pass and gave it to a Mr. Nelson, another employee of Bonanza Airlines who testified, this is Mr. Nelson, that he gave you the return pass for Mr. Fuson and asked to be permitted on the aircraft.

Have I told you about this?

A. Yes, sir.

Q. Do you remember this incident specifically?

A. No, sir, I do not.

Q. Have you as a result of our conversation instituted any new policy with respect to using the return pass, the use of the return pass?

A. Yes, sir. If it is not on the confirmed date return, if there is any length between the time of the confirmed return and the time that the guest checked in with me, I ask for identification now.

(Testimony of Charles W. Mann.)

Q. Now, let me ask you this hypothetical question. If you had known that Mr. Nelson was not Mr. Fuson when he handed you this return pass, what would you have done?

A. I would have told him what I tell everybody [717] else, that the package is non-transferable.

Q. Now, Mr. Mann, do you prepare the manifests in Las Vegas for the return Magic Carpet Flight to Los Angeles and Burbank?

A. I do.

Q. Now, do you receive orders and instructions from anyone? A. Major Riddel.

Q. Who is Major Riddel?

A. President of the Dunes Hotel.

Q. Did Mr. Riddel give you any instructions pertaining to the Dunes Magic Carpet Flight and your handling of it? A. Yes, sir.

Q. In Los Vegas?

A. Yes. His instructions were to get people to the Dunes, do everything I can to keep them at the Dunes and make them feel at home, that it costs us a lot of money to fly these guests up here and we didn't want them going any place else. Those were his orders.

Q. Have you done your very best to carry out Mr. Riddel's instructions?

A. I have done my very best, sir.

Q. I am going to show you Respondent's Exhibit 7 in evidence in this proceeding, and I show you Line 11 of [718] that manifest.

(Testimony of Charles W. Mann.)

A. Yes, sir.

Q. Will you please read the entries shown there.

A. Cramer A.

Q. Do you know a person by the name of Cramer A? A. Yes, Miss Cramer.

Q. Did you on the date of this manifest which is January 10, 1960, I believe it is a Sunday, did you see Miss Cramer? A. Yes, I have.

Q. Where did you see her on that occasion?

A. In the Latin Room. I had coffee with her.

Q. What was Miss Cramer doing at that time?

A. She was having a buffet, eating there.

Q. Did you see her in and about the Dunes Hotel on that date?

A. I saw her at that time. That is all I remember seeing her. I distinctly remember seeing her on that date. [719]

* * *

Redirect Examination

By Mr. Ginsburg:

Q. Referring to this no revenue designation in the manifests shown to you by Mr. McCollam.

A. Yes, sir.

Q. Is there any charge imposed by the Dunes Hotel for the air transportation involved where there is a notation no revenue?

A. No charge whatsoever. [727]

Q. Do those people purchase a Dunes Magic Carpet Tour? A. No, sir.

(Testimony of Charles W. Mann.)

Q. Do they purchase any part of a Dunes Magic Carpet Tour? A. No, sir.

Q. Now, in connection with your testimony concerning the off space on TWA. A. Yes, sir.

Q. Did the guests of the Dunes Hotel who were off space on TWA pay the Dunes anything for their transportation from Las Vegas to Los Angeles?

A. None whatsoever.

Q. Now, Mr. Mann, to the best of your knowledge does every person who travels on this flight, the Dunes Magic Carpet Flight, go to the Dunes Hotel and use their facilities?

A. To the best of my knowledge.

Q. Do you know of a single instance where a guest or person who traveled on this Dunes Magic Carpet Flight did not go to the Dunes Hotel and did not partake of its facilities?

A. No, sir. [728]

* * *

JERRY BUCKLEY

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ginsburg:

* * *

Q. Mr. Buckley, did you have occasion recently to call the Dunes Hotel in the Los Angeles area on the telephone? A. Yes, sir.

(Testimony of Jerry Buckley.)

Q. Approximately when did you make that particular call? [729]

A. This was during the month of November.

Q. Do you recall what Dunes office you called?

A. It was the Beverly Hills office.

Q. Did you speak to someone there?

A. Yes, the girl, the receptionist.

Q. Did you make a request of her?

A. Yes, sir, I did.

Q. Will you relate that request as best you can recall?

A. This particular call came on a Thursday. I decided to go to Las Vegas on rather short notice. I called her to find out if there was any possibility of getting on the Dunes Flight.

Q. What did she say?

A. First of all she asked me if I was going up for the all night trip or for the evening, up and return. I advised I was staying over, and she mentioned that there might be some problem in getting me on the flight. As I recall I believe she called me back. Either that or kept me on the phone for a period of time while she did some checking.

Q. Continue relating the conversation.

She at that time verified that she could get me on the flight, and she also had the reservations made for me at the Dunes Hotel. [730]

Q. What did you say, Mr. Buckley?

A. I commented that I was happy to pay the fee for the flight. However, I wasn't certain that I would stay at the Dunes. She commented that that

(Testimony of Jerry Buckley.)

would make it an impossibility for her to sell me the tickets because actually I was staying at the Dunes and it was not the flight that was involved. She would be happy to furnish my transportation, but it was available for the guests of the Dunes.

Q. Were you refused transportation on the Dunes Magic Carpet Tour?

A. On that basis, yes.

Q. Did you go to Las Vegas by some other means? A. Yes, sir, I did.

Q. Did you go by some other means?

A. Yes.

Q. How did you go there?

A. I took the Union Pacific, City of Las Vegas or the special train that they have to go to Las Vegas.

Q. Now, Mr. Buckley, do you know who can travel on the Dunes Magic Carpet Flight?

A. My understanding is it is the guests of the Dunes.

Q. Did you know whether or not there is any charge for the Dunes flight?

A. No, I understand the Dunes flight is of [731] no obligation.

Q. No charge, is that correct? A. Right.

Q. Have you ever seen the Dunes ad in the Los Angeles newspapers?

A. Yes, sir. That is I believe where I first came in contact with the flight.

Q. Do you know, do you recall whether there

(Testimony of Jerry Buckley.)

was any limitation on who could take the flight in that ad?

A. To the best of my knowledge, as I recall, it says the guests of the Dunes Hotel.

Q. Now, have you ever taken the Dunes Magic Carpet Tour on any other occasion?

A. Yes, sir.

Q. To the best of your knowledge when did you take the Dunes Magic Carpet Tour?

A. This was in the area of May.

Q. You are not certain?

A. The summer months. I am not certain of the date.

Q. Did you stay overnight in Las Vegas on that occasion?

A. On that occasion, no. We came back, left Las Vegas at approximately 4:00 o'clock in the morning.

Q. Were you traveling with someone else? [732]

A. Yes, sir.

Q. Who were you traveling with?

A. Mr. Martinez.

Q. Is he associated with you in your business?

A. Yes, sir, he is.

Q. Now, when you arrived in Las Vegas, would you state what happened when the aircraft landed at the airport?

A. Certainly. We landed at the airport in Las Vegas. There was a Tanner limousine bus waiting to pick us up after we got off, and we got directly

(Testimony of Jerry Buckley.)

onto the transportation provided by the Dunes and went to the Dunes Hotel.

Q. Where else did the bus go?

A. Nowhere that I can recall.

Q. Did all the guests who were on the bus get off at the Dunes Hotel?

A. Yes. I am quite certain of this. I was in the back.

Q. Where did you spend the evening, where did you and Mr. Martinez spend the evening that you were in Las Vegas on that occasion?

A. I would say 95 per cent of the time we spent at the Dunes.

Q. Did you partake of the buffet dinner that is made available or purchased as part of the Dunes Magic [733] Carpet Tour?

A. Yes, sir, I did or we did, I should say.

Q. Yes. Did you attend the show in the Arabian Room which is made available or which is a part of the Dunes Magic Carpet Tour? A. Yes.

Q. Did you also obtain a cocktail, a free cocktail or a cocktail in connection with that show which is part of that tour?

A. Yes. I believe I took advantage of all of the opportunities made available.

Q. Did you return on the Dunes Magic Carpet Tour that same evening? A. Yes. [734]

HERBERT HYMAN

was called as a witness by and on behalf of the Respondents and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ginsburg:

Q. And do you reside in the Los Angeles area, Mr. Hyman? A. Yes.

Q. Mr. Hyman, did you ever travel to Las Vegas on the Dunes Magic Carpet Tour?

A. Yes, I have.

Q. And referring to the year 1959, how many times have you taken the Dunes Magic Carpet Tour?

A. I would say approximately three times.

Q. When did you last take the Dunes Magic Carpet [742] Tour?

A. Oh, it was this past Tuesday a week.

Q. Would that be the 12th of January of this year? A. I would assume so.

Q. And prior to that when did you take the Dunes Magic Carpet Tour, if you can recall?

A. Around the summertime.

Q. Of this—of 1959? A. Of 1959.

Q. And prior to that did you take it this year?

A. Yes, several times, the early part of the year. The latter part I didn't get a chance to get up there as much as I tried but—

Q. Mr. Hyman, have you stayed overnight in Las Vegas on each of these occasions?

A. One time I didn't, no.

(Testimony of Herbert Hyman.)

Q. And do you recall when that occasion was?

A. When I took my brother-in-law, he is from New York, and I took him as a guest for the evening at the Dunes.

Q. And where did you leave from on that occasion?
A. From Burbank.

Q. And where did you leave from on the other occasions you have testified about?

A. Burbank. [743]

Q. On the occasion when you went with your brother-in-law when did you return from Las Vegas?

A. We came back on the early morning flight, that was I believe 4:00 o'clock in the morning.

Q. Would that be the following morning?

A. Yes.

Q. And where did you spend your time in Las Vegas on that occasion?
A. At the Dunes.

Q. Now, on the other occasions in 1960 when you took the Dunes Magic Carpet Tour you stayed overnight, is that correct?
A. Yes.

Q. In Las Vegas?
A. Yes.

Q. And where did you stay on each of those occasions?
A. At the Dunes.

Q. Now, Mr. Hyman, do you know what the charge is for the air transportation on the Dunes Magic Carpet Tour?

A. I don't—my understanding is there are not charges as far as the flight is concerned.

Q. And do you know to whom the Magic Carpet Flight is available, what group of people?

(Testimony of Herbert Hyman.)

A. Well, according to my understanding it is available to the guests of the hotel. [744]

Q. Now, on each of the occasions in 1959 when you traveled on the Dunes Magic Carpet Tour, did you sign a document, a paper at the desk or the check-in counter at the Burbank Airport?

A. To my recollection I have, yes.

Q. Mr. Hyman, I show you what has been marked for identification as Respondent's Exhibit 6-C for identification and I ask you if you have ever seen a book similar to this? A. Yes.

Q. And where did you see it, sir?

A. At the reservation desk at the airport, Burbank Airport.

Q. What do you understand this book to be?

A. It is a guest register for the hotel.

Q. And what hotel is that, sir?

A. That's the Dunes, that's where I go.

Q. And I show you, Mr. Hyman, a page with the date 1-12-60, it would be the second line, and I show you a signature there and I ask you if you can identify it. A. That's my signature.

Q. And this is your address shown here, 12728 Bessemer Street, North Hollywood? A. Yes.

Q. Now, on the occasion when you went to Las Vegas on the Dunes Magic Carpet Tour in January of this year [745] did you purchase the Dunes Magic Carpet Tour, purchase anything?

A. I don't understand you.

Q. Now, on the occasions prior to January 12th when you went to Las Vegas on the Dunes Magic

(Testimony of Herbert Hyman.)

Carpet Tour, Dunes Magic Carpet Flight, excuse me, did you acquire a document similar to this which has been marked as R-5 for identification?

A. Yes.

Q. And did you pay some sum for that?

A. Yes.

Q. Now, on the occasion of the January 12th flight did you purchase one of these tours?

A. Yes, we got tickets like this, too.

Q. Did you pay any sum of money at all for the benefits outlined in this booklet which is identified as R-5 on the occasion of the January 12th flight?

A. Did I pay any sum for these tickets?

Q. Yes. A. Yes, yes.

Q. Now, Mr. Hyman, are you familiar with the procedure, do you recall the procedure that's followed when the Dunes Magic Carpet Flight arrives in Las Vegas? A. Yes.

Q. Does someone board the aircraft when it arrives [746] in Las Vegas?

A. Well, they have a fellow who meets the plane and boards the plane before anybody, any of the guests of the plane get out.

Q. Yes.

A. He greets everybody and welcomes them in the name of the Dunes Hotel.

Q. And does that person take the guests anywhere?

A. Yes. He directs them from the plane and helps them get aboard the bus which is usually

(Testimony of Herbert Hyman.)

parked right outside the gate, and we get—you get on the bus and he then reads off all the names and then we go to the hotel.

Q. Going back just a moment, do you pass through the passenger terminal at the airport to get to the bus? A. No.

Q. Have you ever observed on any of your trips to Las Vegas any of the other guests of the Dunes Hotel get out of the aircraft and not board the bus?

A. Not to my knowledge, no.

Q. Now you stated the bus goes to the Dunes Hotel. Does the bus go any other place, do you know? A. No.

Q. When you arrive at the Dunes Hotel on the bus, where do you go from there?

A. The bus doesn't go anywhere. My understanding is [747] that's it.

Q. Where do you go from there, is my question?

A. I go in the lobby to register.

Q. Where do you receive your baggage?

A. In the lobby.

Q. Have you ever observed the Dunes advertisements in the Los Angeles newspapers?

A. Yes.

Q. And have you observed in that advertisement that there is any limitation on who can travel on the Dunes Magic Carpet Flight or take the Dunes Magic Carpet Tour?

A. Well, no limitation except it just says "Limited to the guests of the hotel," I mean. Of course, there's never been any problem with me

(Testimony of Herbert Hyman.)

because I have always been a guest there. That's the only place I go actually.

Q. Have you ever taken a commercial airline such as Pacific or United or TWA or Western Airlines to Las Vegas? A. No, never.

Q. And do you partake of the benefits which you purchase on the Dunes Magic Carpet Tour such as the buffet dinner? A. Yes, yes, I have.

Q. And the cocktail in the Sinbad Lounge?

A. Yes. [748]

Q. And the cocktail in the Arabian Room?

A. Yes.

Q. And do you also acquire the bottle of the Dunes special champagne?

A. Four or five of those.

Q. Have you always been well treated at the Dunes Hotel?

A. Well, I wouldn't go anywhere else in Las Vegas.

Q. And do you enjoy the tour that is available to you? A. Very much so. [749]

* * *

Mr. Ginsburg: Mr. Examiner, at this time [763] I would like to have Exhibit R-8 identified.

Examiner Walsh: Very well.

Mr. Ginsburg: It purports to be the hotel register of the Dunes Hotel, a sample of certain representative days showing the entries in the hotel register made at the Los Angeles Air Terminal and Los Angeles International Airport at Burbank. We

also have the cover page of the second book of the Los Angeles International Airport, that is the guest register that is maintained there. I will state for the record just precisely what is contained. There is the cover page from the second book of the hotel guest register maintained at the Los Angeles International Airport, the Catalina counter. There are the actual pages from the guest registers showing entries on July 17, 1959, September 22nd, 1959, November 7, 1959, and January 10, 1960. Now, with respect to these documents the Compliance Attorney and I are stipulating that these are typical entries for typical days in the hotel guest registers maintained at the two places, Los Angeles International Airport and Lockheed Air Terminal in Burbank. They are typical only for the period with respect to the Burbank book or books after April 1, 1959, and for the Los Angeles International Airport hotel guest registers for the period commencing July 8th, 1959. Is that stipulation agreeable?

Mr. McCollam: Yes. [764]

Examiner Walsh: Very well. The record will so show.

Mr. Ginsburg: At this time I would like to offer in evidence Respondent's Exhibit R-8.

Examiner Walsh: Very well. It is received.

(Respondent's Exhibit No. R-8 was marked for identification and received in evidence.)

Mr. Ginsburg: Mr. Examiner, at this time in view of the stipulation with the Compliance Attorney I would like to withdraw the exhibits pre-

viously identified as R-2, R-4 A and B and R-6 A, B and C, which are the originals of the hotel guest books, guest register books.

Examiner Walsh: That may be done.

Mr. Ginsburg: They will be available here at the hearing if anybody needs them.

(Exhibits R-2, R-4 A and B and R-6 A, B and C were withdrawn.)

Mr. Ginsburg: I will call Mr. Harry Lloyd.

HARRY LLOYD

resumed the witness stand, and having been previously sworn, [765] testified further as [766] follows:

* * *

[Title of Board and Cause.]

MOTION TO DISMISS

Catalina Air Transport, by its attorneys, respectfully requests the Board to dismiss the complaint in this proceeding as to Catalina Air Transport. At the present time, Catalina has not conducted operations for more than a year and does not have any personnel in its employ. It is therefore clear that the issuance of a Cease and Desist Order by the Board against Catalina would not serve the public interest in any manner. Such an order would only injure the reputation of its past officers and execu-

tives such as Mr. Donald C. McBain who resigned his position as president on July 31, 1959.

Wherefore, it is respectfully requested that the Board dismiss the complaint against Catalina Air Transport in this proceeding and for such other and further relief as the Board may deem reasonable and proper.

Respectfully submitted,

CATALINA AIR TRANSPORT.

By HALEY, WOLLENBERG &
BADER,

/s/ ANDREW G. HALEY,

/s/ DONALD L. RUSHFORD.

Affidavit of service by mail attached.

Received: November 1, 1960.

United States of America Civil Aeronautics Board,
Washington, D. C.

Docket No. 10606

In the Matter of:

M & R INVESTMENT COMPANY, INC., d/b/a
DUNES HOTEL AND CASINO, et al.

EXECUTIVE SESSION

Los Angeles, California, Friday, January 15, 1960.

* * *

HARRY R. LLOYD

was recalled as a witness on behalf of the Office of Compliance and, having been first duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. McCollam: [1341]

* * *

(Respondents' Exhibit No. 3 was marked for identification.) [1358]

* * *

Q. To your knowledge, how long has this same wine list been in effect and available at the Dunes Hotel? A. Since September of '58.

* * *

Q. And what price is shown?

A. \$17.50 per bottle.

Q. Do you know what price this champagne is available for to purchase at the Dunes Hotel?

A. Yes, sir.

Q. What price is that? [1359] A. \$17.50.

Q. Now, I will ask you if you know, if you will examine this wine list, if you will state whether each of the items on this wine list is offered for sale with the expectation or hope of making a profit on it? A. Yes, sir. [1360]

* * *

(Testimony of Harry R. Lloyd.)

Further Recross-Examination

By Mr. Ginsburg: [1373]

* * *

Q. In connection with guests who have reservations, room reservations to the Dunes Hotel, do you know when they pay those—let's assume someone who is taking the Magic Carpet; when they pay for those rooms, in relation to whether it is before or after they take the flight from Los Angeles to Las Vegas?

A. They pay for those rooms before they board the aircraft for the flight. [1374]

* * *

Q. This guest registration book has been marked for identification as R-2, Respondents' No. 2 for identification, and it was identified by someone—I forget whom—as the registration book at the Lockheed Air Terminal in Burbank. A. Yes, sir.

Q. Have you ever seen one of these books before?

A. Yes, sir.

Q. Do you know when the Magic Carpet Tour guests sign that book in relation to the time of the flight? A. Before they board the aircraft.

Q. I will ask you if the Dunes regards this guest registration book as an official part of the Dunes records? A. Yes, they do.

Q. And how is it regarded, if you know?

(Testimony of Harry R. Lloyd.)

A. How do you mean? It is regarded as an official record of registration of guests of the Dunes Hotel. [1375]

* * *

A. It will show the champagne and the buffet—

Mr. Ginsburg: I object, not the best evidence.

Mr. McCollam: Try to find out what the evidence is.

Mr. Ginsburg: I emphasize in this proceeding that this isn't just an exploratory conversation. This is an enforcement case. How can I make it plainer? This man keeps saying that he wants the record to show, and all this sort of thing. There are issues in this proceeding. [1378]

* * *

January 22, 1960

(Mr. Harry Lloyd, on the stand at the time the hearing went into Executive Session, resumed his testimony as follows:)

Q. (By Mr. Ginsburg): Mr. Lloyd, will you state your position at the Dunes Hotel?

A. I am comptroller and assistant to the president.

Q. Do you have executive functions in addition to your accounting and auditing? A. Yes, sir.

Q. That's in your capacity as the assistant to the president of the Dunes? A. Yes, sir. [1384]

(Testimony of Harry R. Lloyd.)

* * *

Q. Now, Mr. Lloyd, are you familiar with the price of the Dunes Magic Carpet tour, the charge to the guests of the Dunes? A. Yes, I am, sir.

Q. Will you state for the record what the charges for the Dunes Magic Carpet tour is?

A. \$29.95 [1385]

Q. Now, is that price charged all the times?

A. No, sir. During the week it is reduced to \$19.95.

Q. Will you state the reason for that, Mr. Lloyd?

A. We do that as an added inducement to have our guests come in the middle of the week when the facilities are not quite so crowded and more room is available.

Q. Mr. Lloyd, I am going to ask you about each of the items in the Dunes Magic Carpet tour package. Are you familiar with the items in that package tour? A. Yes, sir.

Q. And in connection with some of these items I am going to ask you the basis for the charge to the Dunes guests. Now, first of all, what is the charge for the air transportation?

A. The charge on the package is \$1.00 from McCarran Air Field to the Dunes Hotel.

Q. Were you referring to the limousine service?

A. The limousine service.

Q. I am talking about the air transportation.

A. Oh, I am sorry.

Q. What is the charge?

(Testimony of Harry R. Lloyd.)

A. There is no charge for the air transportation.

Q. What is the charge to the guests for the limousine service from the Las Vegas Airport to the hotel, the Dunes Hotel? [1386] A. \$1.00.

Q. And will you state what the basis for that charge is, Mr. Lloyd?

A. That is the rate charged by Tanner Motor Tours to any person arriving at the Las Vegas Airport who wishes to go to a hotel on the Strip.

Q. Will you state for the record how you know that that's the charge?

A. There is a sign at McCarran Airport where the limousine parks.

Q. And what does that sign say?

A. It says "One Dollar per Person to Any Hotel on the Strip," and "One Dollar and a Quarter to any Downtown Area."

Q. Now is the Dunes Hotel on the so-called Strip in Las Vegas? A. Yes, sir, it is.

Q. Now what is the charge to the Dunes Hotel guests for the buffet dinner? A. \$2.00.

Q. And what is the basis for that charge?

A. That is our regular retail price to any person who comes into the hotel.

Q. And purchases that buffet dinner?

A. And purchases the dinner.

Q. Now what is the charge to the Dunes guests for the [1387] cocktail in the Sinbad Lounge?

A. Eighty-five cents.

Q. And will you state for the record what the basis is for that charge?

(Testimony of Harry R. Lloyd.)

A. That is the normal average bar price in the Sinbad Lounge.

Q. Well, what is the range of bar prices in the Sinbad Lounge?

A. They will range from 75 cents to \$1.25.

Q. Now as a holder of the Dunes Magic Carpet tour they are entitled to the \$1.25 drink?

A. Yes, sir.

Q. What is that drink, for the record?

A. Champagne cocktail.

Q. Now what is the charge to the guest for the show reservation and one drink? A. \$3.00.

Q. What is the basis for that charge?

A. That is the rate charged to any guest of the hotel who wishes to attend that show.

Q. Whether or not he is a holder of the Dunes Magic Carpet tour?

A: That's right, sir, any person who wishes to go.

Q. What is the charge for the bottle of the Dunes champagne? [1388] A. \$17.50.

Q. What is the basis for that charge, please?

A. That is our retail selling price for champagne.

Q. What is the charge for the limousine from the hotel to the airport, Dunes Hotel to the airport?

A. \$1.00.

Q. What is the basis for that?

A. That is the standard charge made by Tanner.

Q. To a member of the public?

A. For any person.

Q. Is that right?

A. Yes, to the general public.

(Testimony of Harry R. Lloyd.)

Q. Now, do you also have a charge for the champagne in flight? A. Yes, sir.

Q. And what is that, please?

A. It runs from \$5.00, \$5.51.

Mr. Ginsburg: Mr. Examiner, at this time I would like to have marked as Respondents' Exhibit No. 9 for identification what purports to be a statement of champagne issued the guests in flight on the Dunes Magic Carpet tour for the Dunes flight package?

Examiner Walsh: It will be so marked.

(Respondents' Exhibit No. 9 was marked for identification.) [1389]

Q. (By Mr. Ginsburg): Mr. Lloyd, I show you Respondents' Exhibit 9 for identification and ask you to examine it. A. Yes, sir.

Q. By whom was this exhibit prepared, Mr. Lloyd? A. By me, sir.

Q. Is it true and correct to the best of your knowledge and belief? A. Yes, sir.

Q. And what was the source of your information for the figures that appear on this document?

A. The champagne requisitioned from our main storeroom in the Dunes Hotel, and the number of Magic Carpet tours from the manifests.

Q. Will you state for the record why the particular months of March, June and October and December were selected by you?

A. Well, the resort business is based on the season of the year actually, and I took what I

(Testimony of Harry R. Lloyd.)

considered to be representative months out of the four seasons of the year.

Q. Will you state for the record how you computed the cost of the champagne in flight for each individual guest on the Dunes Magic Carpet tour?

A. I took the number of bottles issued, say for the month of March, multiplied that by our retail selling price, [1390] divided that figure by the total number of Magic Carpet tours for that month, and arrived at an average cost per guest.

Q. Now is the Dunes Hotel a resort type of hotel? A. Yes, sir.

Q. I will ask you what these bottles of champagne which you took from the requisition list—is that right——

A. They are issued on requisition.

Q. ——what are they used for?

A. They are used for the champagne and issued to the guests in flight on the Magic Carpet tour.

Q. Are they used for any other purpose?

A. No, sir.

Q. Now will you state for the record what the total cost of the tour package is as it appears from this exhibit? A. \$30.96.

Q. But in actuality you sell it for what price?

A. \$29.95.

* * *

Q. Now, Mr. Lloyd, will you state for the record what the facilities—Strike that, please. What is the primary [1391] business of the Dunes Hotel?

A. The resort hotel business, and Casino.

(Testimony of Harry R. Lloyd.)

Q. Will you state for the record, just describe the facilities of the Dunes Hotel, what it consists of?

A. Those of a normal resort hotel; we have 200 rooms, swimming pool, lawns, flowers, a coffee shop, a theater-restaurant, a cocktail lounge and a large Casino.

Q. Do you have any shops also in your hotel?

A. Yes, sir; a gift shop and cigar stand, flower shop, a barber shop, and a beauty salon.

Q. Now, does the Dunes own any facilities in connection with the—Does the Dunes own any aircraft? A. No, sir.

Q. Does it own any aviation equipment to your knowledge that is used in the Magic Carpet tour, Magic Carpet flight I should say?

A. Not aviation equipment as such; office equipment, a truck that is used to transport baggage, and that sort of thing.

Q. That is used in what city?

A. Las Vegas.

Q. Now, Mr. Lloyd, does the Dunes Magic Carpet tour operate on a profit basis? A. No, sir.

Q. Do you have an estimate of the profit or loss for [1392] the year 1959?

A. Yes, sir, I made such a study.

Q. And what is the result of your study?

A. It was in excess of \$100,000.00.

Q. What was that, profit or loss? A. Loss.

Q. Thank you. I will ask you if the Dunes has ever had a profitable month during the year 1959 on the Magic Carpet tour? A. No, sir.

Q. Mr. Lloyd, we had better go through the

(Testimony of Harry R. Lloyd.)

individual items on the Dunes Magic Carpet tour to determine how you attributed expenses to the tour.

First of all, how many employees are there at the Dunes who work on the Dunes Magic Carpet tour?

A. There are four full-time employees and four part-time.

Q. And did you consider the salaries of these people in setting this up, in determining the profitability or loss of the Magic Carpet tour?

A. Yes, sir.

Q. Will you state for the record how you determined the profitability or the loss that occurred on the Magic Carpet tour?

A. Well, I prepared a more or less profit or loss [1393] statement on the various items that comprised the tour. However, in computing this loss I did not use the retail price of the various items there. I used our actual wholesale cost.

Q. All right. I will ask you some specific questions, Mr. Lloyd. What do you include as the cost of the limousine service in this computation?

A. I used 50 cents per guest each way.

Q. What amount do you actually pay to Tanner for this? A. Fifty cents.

Q. What charge did you include for the buffet dinner?

A. \$2.00. That is our actual cost on that buffet.

Q. In other words, the buffet is not a profit-making operation?

(Testimony of Harry R. Lloyd.)

A. No, sir, it is there to—as an attraction of the inn—I mean of the Dunes Hotel.

Q. And what charge did you make for the Sinbad Lounge cocktail?

A. I used the—over-all bar cost plus the over-all percentage cost of payroll to arrive at that.

Q. Did you take the retail price of the drink into consideration? A. Yes, sir.

Q. Did you use the retail price of the drink as the cost? [1394]

A. No, sir. I used our actual bar cost on that.

Q. And did it include any portion of the salaries of the people who make the drink, bartenders and so forth? A. Yes, sir.

Q. What cost did you include for the show reservation and cocktail?

A. Just the actual cost of the beverages consumed.

Q. And again you are not referring to the retail price? A. No, our wholesale cost.

Q. And did you include any amount of salaries or wages paid to anyone?

A. Not on that particular item. I computed that only in the Sinbad Lounge cocktail because we feel that it picks up the waiters and the waitresses and cooks and bakers and everyone else who are indirectly concerned with those guests.

Q. What charge did you include for the Dunes special Gold Label Champagne, the bottle of champagne that is given to the guests?

(Testimony of Harry R. Lloyd.)

A. I used our wholesale cost which is 1.5075, something like that.

Q. Something slightly more than \$1.50?

A. That's right, sir.

Q. And for the limousine service from the Dunes Hotel to the airport? A. Fifty cents. [1395]

Q. Who can take the Dunes Magic Carpet flight?

A. Only guests of the Dunes Hotel.

Q. And why is that limitation imposed?

A. Well, primarily because we are not interested in just bringing people to Las Vegas to go to the Riviera, the Desert Inn, or any other hotel on the Strip. We want them in the Dunes Hotel.

Q. And you are willing to fly them?

A. Free of charge to get them there.

Q. Will you state how the Dunes management regards the Magic Carpet tour and in what light it regards it?

A. They regard it as a convenience to our guests, just the same as they consider our telephone department a convenience to the guests.

Q. Let me ask you this: Does the telephone department of your hotel operate at a profit or at a loss?

A. It has never made a nickel since the day it started.

Q. Does it operate at a loss?

A. Definitely, sir.

Q. How does that compare with the experience you have had with other hotels?

(Testimony of Harry R. Lloyd.)

A. It is the same in any hotel that you go into. Their telephone department is a loss.

Q. Has that been your experience in your 25 years in this business? [1396] A. Yes, sir.

Mr. Ginsburg: Now I would like to have marked as Respondents' Exhibit for identification a statement of various items entitled "M & R Investment Company Magic Carpet Tour, Calendar Year 1959," as Respondents' Exhibit No. 10.

Examiner Walsh: It will be marked for identification.

(Respondents' Exhibit No. 10 was marked for identification.)

Q. (By Mr. Ginsburg): I show you Respondents' Exhibit No. 10 for identification, Mr. Lloyd, and ask you to examine it. A. Yes, sir.

Q. Who was this exhibit prepared by?

A. Myself.

Q. Is it true and correct to the best of your knowledge and belief? A. Yes, sir.

Q. Will you state for the record what this exhibit contains, please?

A. It contains the—by months in the calendar year 1959 the total number of Magic Carpet tours we had, the bottles of champagne that were picked up by our guests, the buffet dinners that were used by our guests, also a month-by-month recapitulation of our gross revenues, both the hotel and those derived from the sales, the Magic Carpet tour coupons. [1397]

(Testimony of Harry R. Lloyd.)

Q. Is there another column?

A. Yes, totalling those two revenues.

Q. And with respect to those monthly and annual revenues that you have just referred to, are those expressed in dollars? A. Yes, sir.

Q. I will ask the witness to add a dollar sign to the exhibit so it will be clearly indicated.

A. (Witness did as directed.)

Q. What is the source of the figures appearing under the total number of Magic Carpet tours? Where did you obtain the information that you included there? A. From the daily manifests.

Q. And the number of bottles of champagne that were picked up by the Dunes Magic Carpet tour guests, where did you obtain that information?

A. By the number of coupons turned in by the bartender who presented these bottles to the guests. [1398]

* * *

Q. Now, what was the source of the information for the number of buffet dinners as indicated in this exhibit?

A. The number of coupons turned in by the food checkers.

* * *

Q. What is the source of the figures appearing under "Hotel Revenues"? Where do you get those from?

A. The original books and records of M & R investment [1399] Company.

(Testimony of Harry R. Lloyd.)

Q. And just for the record, the Dunes Hotel is a fictitious name for M & R Investment Company?

A. That's right, sir.

Q. And is the same true of the source of the revenues for the Magic Carpet tour? Where do you obtain those from?

A. From our books and records.

Q. And have you also made the percentage computations appearing on the bottom line of the exhibit? A. Yes, sir.

Q. Now, Mr. Lloyd, you have testified how many employees of the Dunes are employed in connection with the Dunes Magic Carpet tour. Can you tell us how many employees the Dunes has, the Dunes Hotel has all told?

A. It will average out at 500. It varies according to the time of the year, but not too much.

Q. Mr. Lloyd, can you state for the record—Do you know what the investment of the Dunes Hotel is and its facilities? A. Yes, sir.

Q. And what is that?

A. Well, the M & R Investment Company is actually a leasehold and our interest there is \$1,300,000.00.

Q. What is the amount of the investment of the M & R Investment Company, Inc., in the facilities involved in the [1400] Magic Carpet tour?

A. I couldn't state definitely, but it would be under \$10,000.00 in trucks, office equipment and that sort of thing.

Mr. Ginsburg: Mr. Examiner, I would like to

(Testimony of Harry R. Lloyd.)

have marked as Respondents' Exhibit No. 11 for identification what purports to be a tabulation of the M & R Investment Company, Inc., tour coupons usage January 10, 1959.

The Witness: That should be '60.

Mr. Ginsburg: '60, I beg your pardon.

Examiner Walsh: That is marked for identification as Respondents' Exhibit 11.

(Respondents' Exhibit No. 11 was marked for identification.) [1401]

* * *

Q. Will you state what the exhibit contains?

A. It contains all the coupons used on January 10th, 1960.

Q. What coupons are they?

A. Of the Magic Carpet tour.

Q. Now does this exhibit purport to be an analysis of the use of these coupons for that flight?

A. Yes, it does, sir.

* * *

Q. I show you Respondents' Exhibit No. 7 in evidence which is a passenger manifest dated January 10, 1959, which has been corrected to be January 10, 1960, and ask you if these are the same persons whose coupons appear in Exhibit No. 11 for identification? [1402]

A. Yes, sir.

* * *

(Testimony of Harry R. Lloyd.)

Mr. Ginsburg: Now, Mr. Examiner, I would like to state for the record that I have certain documents which I do not want to burden the record with, but which I made available to the Compliance Attorney for examination, and they consist of the following: audit copy of the Dunes Hotel Magic Carpet tour for each of the guests who were on this flight. This is similar to one of the pages of Respondents' Exhibit No. 5 for identification. It would be the first copy of the top coupon, the one that's written on. In addition we have for each of the passengers and guests of the Dunes Hotel a signed—this would be for 56 of the 57—a signed Dunes Hotel register card. [1403]

* * *

These folios and audit copies of the tour booklet, the Magic Carpet tour booklet and the signature cards for 56 of the 57 tour guests would be available during the remainder of the session of the hearing for examination by Compliance Attorney. I will turn them over to the Compliance Attorney now and would have the record reflect that, Mr. Examiner.

Examiner Walsh: Yes. [1406]

* * *

Q. Now will you state again what you regard as the primary business of the Dunes Hotel?

Mr. McCollam: I object to that. That's been

(Testimony of Harry R. Lloyd.)

asked and answered, and I didn't question him about that at all.

Mr. Ginsburg: You were going into the Casino, as to the extent of the operation of the Casino.

Examiner Walsh: Very well, I will overrule it.

Mr. Ginsburg: Could I have it read back?

Examiner Walsh: Read the question, Miss Reporter.

(Pending question read.)

The Witness: Resort hotel and casino. [1422]

* * *

Mr. Ginsburg: Mr. Examiner, at this time I would like to offer in evidence Respondents' Exhibits 9, 10 and 11 for identification.

* * *

(Respondents' Exhibits Nos. 9, 10 and 11 were received in evidence.)

* * *

In the United States Court of Appeals
for the Ninth Circuit

No. 17314

M & R INVESTMENT COMPANY, INC., d/b/a
DUNES HOTEL AND CASINO, et al.,

Petitioners,

vs.

CIVIL AERONAUTICS BOARD OF THE
UNITED STATES OF AMERICA,

Respondent.

CERTIFICATION OF TRANSCRIPT
OF RECORD

It Is Hereby Certified that the annexed materials numbered from page 1 to page 1337, inclusive, together with the materials listed in the attached separate index, constitute a true copy of the transcript of record upon which was entered Civil Aeronautics Board Order E-16331.

The annexed materials comprise the public portions of the transcript of record relating to said Order E-16331. The materials listed in the separate index were, on petitioners' motion, withheld from public disclosure pursuant to Rule 39 of the Board's Rules of Practice and Section 1104 of the Federal Aviation Act of 1958. Such confidential materials are being held by the Board for and on behalf of

United States Court of Appeals for the
Ninth Circuit

No. 17314

M & R INVESTMENT COMPANY, INC., d/b/a
DUNES HOTEL AND CASINO, et al.,

Petitioners,

vs.

CIVIL AERONAUTICS BOARD OF THE
UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REVIEW OF ORDER OF
THE CIVIL AERONAUTICS BOARD OF
THE UNITED STATES OF AMERICA

To the Judges of the United States Court of Ap-
peals for the Ninth Circuit:

The petition of M & R Investment Company, Inc., d/b/a Dunes Hotel, Trans-Global Airlines, Inc., Catalina Air Transport, d/b/a Catalina Airlines, Don Rich and Fred Miller, respectfully shows to the court as follows:

Nature of the Proceedings

The petitioners seek judicial review of an order¹ of the Civil Aeronautics Board issued at the con-

¹Opinion and Order E-16331, decided February 1, 1961. The Board, by Order E-16541, dated March 22, 1961, denied Petitioners Petition for Rehearing, Reargument and Reconsideration, and partially granted Petitioners' Motion for Stay of Board Order E-16331 until 30 days after this Court enters its opinion in *Las Vegas Hacienda Inc. v. Civil*

clusion of an administrative proceeding, entitled "In the Matter of M & R Investment Company, Inc., d/b/a Dunes Hotel Enforcement Proceeding, Docket No. 10606."

The petitioners are M & R Investment Company, Inc., d/b/a Dunes Hotel, which engages in the resort hotel business in Las Vegas, Nevada; Trans-Global Airlines, Inc., and Catalina Air Transport, commercial operators of aircraft, holding operating authority pursuant to Part 45 of the Civil Air Regulations,² Don Rich and Fred Miller, officials of Trans-Global Airlines.

This proceeding was instituted when the Board of Enforcement filed a complaint with the Board, asserting that petitioners were violating the Federal Aviation Act [49 U.S.C., Section 1301 et seq.]. Specific violations found by the Board in the administrative proceeding were:

1. The Dunes Hotel was engaging in air transportation as an indirect air carrier by holding out and selling Dunes Tours to the general public, and providing air transportation to patrons of the Dunes Tours, without the requisite authority from the Board, in violation of 49 U.S.C., Section 1371(a).

2. Trans-Global and Catalina are, or were, engaging directly in interstate air transportation as

Aeronautics Board, No. 17081. Petitioners will file copies of Board Order E-16541 upon receipt of copies of said order. Board Order and Opinion No. E-16331 is attached hereto as Exhibit "A."

²14 C.F.R. 45.

common carriers, for compensation or hire, without appropriate authority from the Board, in violation of 49 U.S.C., Section 1371(a). These petitioners had operated aircraft used for the transportation of patrons of the Dunes Tours.

3. Petitioners, Rich and Miller, as the "principals" of Trans-Global Airlines, Inc., and as partners in the C-46 Company,³ which leased aircraft which were used in the operation of the Dunes Tours, were also enjoined from "engaging in air transportation," in violation of 49 U.S.C., Section 1371(a).

Jurisdiction and Venue

The Court is given jurisdiction to review the order in question by 49 U.S.C., Section 1486, and 5 U.S.C., Section 1009(b).

Petitioners, Dunes Hotel, Trans-Global and Catalina, have their principal places of business within this judicial circuit. The Dunes Hotel was incorporated in Nevada, and Trans-Global and Catalina were incorporated in California. Each of these petitioners "reside" within this judicial circuit. Petitioners, Rich and Miller, reside in Los Angeles, California.

The venue of this petition is fixed by 49 U.S.C., Section 1486(b), which provides that the petition shall be filed in the judicial circuit where the petitioner resides, or has his principal place of business. Venue is properly laid before this court.

³The C-46 Company was not a respondent before the Board. No order has been issued against it.

Grounds on Which Relief Is Sought

The Dunes Hotel offers free air transportation between Los Angeles, California, and Las Vegas, Nevada, to its guests in Los Angeles, California. The free air transportation is part of the Dunes Magic Carpet Tour package. Trans-Global and Catalina operated aircraft employed in the tour operations. The Board has found that the Dunes, Trans-Global and Catalina operated as common carriers by air, that the flights were held out and offered to the general public, and that the flights were performed for compensation or hire. The Board enjoined the Dunes, Trans-Global and Catalina, from continuing to offer, provide, or operate these flights. Petitioners, Rich and Miller, were similarly enjoined, presumably by virtue of their association with Trans-Global, and their participation as partners in the C-46 Company, the owner of two aircraft which were employed in performing some of the flights.

Petitioners assert the following grounds as their several basis for the relief sought:

1. The Board erroneously found that the flights constitute common carriage, and that the petitioners are common carriers by air. The uncontradicted evidence of record establishes the contrary, in the following respects:

- (a) The flights were held out only to bona fide guests of the Dunes Hotel.

(b) Only guests of the Dunes Hotel were permitted to, and in fact took the flights.

(c) The flights were offered without charge to guests of the Dunes Hotel.

(d) Patrons of the flight were transported free of charge.

(e) The flights were not operated for profit or compensation.

(f) The flights were not operated with the motive or purpose to profit.

(g) The flights were operated in the conduct or furtherance of the resort hotel business of the Dunes Hotel.

(h) The flights were incidental to the primary hotel business of the Dunes Hotel.

2. Although the Board's Hearing Examiner found, (1) that the flights were in furtherance of the hotel business of the Dunes, and (2) that the primary business of the Dunes was the operation of a resort hotel, the Board erroneously found that the flight operations were "interstate air transportation."⁴ The evidence of record, and the Examiner's findings, required the Board to hold that the flights were in "interstate air commerce"⁵ and beyond the economic regulatory authority of the Board.

⁴49 U.S.C., Section 1301(21).

⁵49 U.S.C., Section 1301(20).

3. The Board erroneously issued a Cease and Desist Order against Catalina, although Catalina had terminated its participation in the operation of the flights, and had ceased operations entirely for a substantial period of time prior to the Board's Order. As a matter of law the Board was required to grant Catalina's motion to dismiss the proceeding as against Catalina.

4. The Board committed prejudicial legal error in admitting evidence of events which occurred prior to the effective date of the applicable provisions of the Federal Aviation Act of 1958. The complaint of the Bureau of Enforcement alleged violations of the Federal Aviation Act of 1958. The applicable provisions of this Act did not become effective until January 1, 1959. Nevertheless, the Board admitted in evidence, considered, and relied on evidence of events which occurred prior to January 1, 1959.

5. The issuance of a Cease and Desist Order against petitioners Rich and Miller is beyond the authority and jurisdiction of the Board. Petitioners, Rich and Miller, were erroneously designated as respondents in the administrative proceeding, because the Bureau of Enforcement mistakenly believed that these individual petitioners were partners engaging in the operation of aircraft as Trans-Global Airlines, a partnership. This was corrected by stipulation to show that the operator of the aircraft was petitioner, Trans-Global Airlines, Inc. There is no evidentiary basis whatsoever for the

issuance of a Cease and Desist Order against petitioners Rich and Miller.

6. Petitioners were denied due process, and the Board's Order and Opinion violates the Administrative Procedure Act [5 U.S.C., Section 1007(b)], in the following particulars:

(a) The Board failed to rule on many material exceptions to the Hearing Examiner's Initial Decision, which were filed with the Board by petitioners.

(b) The Board failed to make findings and conclusions upon many material issues of fact and law presented on the record in the administrative proceeding, and to determine or state the reasons or basis for such findings and conclusions.

(c) The Board failed to review the record in the administrative proceeding, and failed to make the findings and conclusions, and determine the reasons and basis therefor, which were set forth in the Board's Order and Opinion; instead, the findings and conclusions, and the reasons and basis therefor, were made and determined by the Opinion Writing Section of the Board.

7. Petitioners were denied due process, and the Board's Order violates the Administrative Procedure Act [5 U.S.C., Section 1006(c)], because harsh economic sanctions were imposed on petitioners by the Board, without considering the record in the administrative proceeding, or such portions of the record as were cited by petitioners.

8. Petitioners were denied due process, and the Board's Order violates the Administrative Procedure Act [5 U.S.C., Sections 1006(c), 1007(b)] because the sanctions imposed by the Board are not based on the findings and conclusions of the Board. Instead, the Board determined to impose serious economic sanctions upon petitioners, and then directed its Opinion Writing Section to make findings and conclusions which would justify the imposition of the sanctions the Board had already determined to impose on petitioners.

9. Petitioners were denied due process and the Board's Order violated the Administrative Procedure Act [5 U.S.C., Section 1006(c)] because the sanctions imposed on petitioners are not supported by or are not in accordance with reliable, probative, or substantial evidence.

10. The Bureau of Enforcement failed to sustain the burden of proving that petitioners violated the Federal Aviation Act [5 U.S.C., Section 1006(c)].

11. The Board's findings of violations by petitioners are arbitrary and capricious and constitute an abuse of discretion, are not in accordance with law, are without observance of procedure required by law, and are unsupported by substantial evidence on the record considered as a whole, including conflicting evidence and evidence from which conflicting inferences could and should be drawn.

12. The Board's order is arbitrary, capricious, constitutes an abuse of discretion, is not in accord-

ance with law, is contrary to constitutional rights, power, privilege, immunity, is in excess of statutory jurisdiction, authority and limitation, is short of statutory rights, is without observance of procedure required by law, and is not supported by substantial evidence on the record considered as a whole, including conflicting inferences and evidence from which conflicting inferences could and should be drawn.

13. The Board's Order is based on unsubstantial, inadmissible, non-probative and untrustworthy evidence.

The Relief Prayed

Wherefore, petitioners pray that this Court review the order of the Civil Aeronautics Board complained of, and that this Court order:

1. That the Board's order be set aside, or,
2. That the Board's order be remanded to the Board for further proceedings in accordance with law, and
3. That the Board's order be stayed pending final determination of this petition, and for such other and further relief as to the Court may seem just.

KEATINGE AND OLDER,

By /s/ ROLAND E. GINSBURG,
Attorneys for Petitioners.

[Endorsed]: Filed March 28, 1961.

[Title of Court of Appeals and Cause.]

PETITIONERS' STATEMENT OF POINTS

Petitioners, M & R Investment Company, Inc., d/b/a Dunes Hotel and Casino, Catalina Air Transport, d/b/a Catalina Airlines, Trans-Global Airlines and Don Rich and Fred Miller, hereby file the following Statement of Points upon which they intend to rely on review:

1. The Board improperly and erroneously relied on evidence of events which occurred prior to January 1, 1959, the effective date of the applicable provisions of the Federal Aviation Act of 1958 (49 U.S.C.A., Section 1301, et seq.).

2. The Board erroneously found that flights operated by petitioners constituted common carriage by air.

3. The Board erroneously found that petitioners are common carriers by air.

4. The Board erroneously failed to find the following, although the evidence of record compels such findings:

(a) Flights were held out only to bona fide guests of the Dunes Hotel.

(b) Only guests of the Dunes Hotel were permitted to board the flights.

(c) Only guests of the Dunes Hotel took the flights; all others were excluded.

(d) Flights were offered without charge to guests of the Dunes Hotel.

(e) Patrons of the flight were transported without charge.

(f) The flights were not operated for profit or compensation, or with the motive or purpose to profit.

(g) The flights were incidental to the primary hotel business of the Dunes Hotel.

(h) The flights were operated in the conduct or furtherance of the resort hotel business of the Dunes.

(i) The primary business of the Dunes was the operation of a resort hotel.

5. The Board erroneously found that the flights were operated in "interstate air transportation." (49 U.S.C., Section 1301(21)), although the evidence of record compels the finding that the flights were operated in interstate air commerce. (49 U.S.C., Section 1301(20)).

6. The flight operations were beyond the economic regulatory authority of the Board.

7. The Board erroneously ordered Catalina Air Transport to cease and desist because Catalina had terminated its participation in the flight operations a substantial period of time prior to the Board's order.

8. The Board's cease and desist order erroneously included a prohibition against flight operations in overseas and foreign air transportation which had not been performed by petitioners.

9. The Board erroneously ordered petitioners, Rich and Miller, to cease and desist from engaging in air transportation. The record conclusively establishes that petitioners Rich and Miller were not engaged in air transportation activities as individuals; these individual petitioners were removed as respondents in the administrative proceeding by stipulation of the parties appearing of record. There is no evidentiary or other basis for the issuance of a cease and desist order against petitioners, Rich and Miller.

10. Petitioners were denied due process, and the Board's Order and Opinion violates the Administrative Procedure Act (5 U.S.C., Section 1007(b)), in the following particulars:

(a) The Board failed to rule on many material exceptions to the Hearing Examiner's Initial Decision, which were filed with the Board by petitioners.

(b) The Board failed to make findings and conclusions upon many material issues of fact and law presented on the record in the administrative proceeding, and to determine or state the reasons or basis for such findings and conclusions.

(c) The Board failed to review the record in the administrative proceeding, and failed to make the findings and conclusions, and determine the reasons and basis therefor, which were set forth in the Board's Order and Opinion; instead, the findings and conclusions, and the reasons and basis therefor, were made and determined by the Opinion Writing Section of the Board.

11. Petitioners were denied due process, and the Board's Order violates the Administrative Procedure Act (5 U.S.C., Section 1006(c)), because harsh economic sanctions were imposed on petitioners by the Board, without considering the record in the administrative proceeding, or such portions of the record as were cited by petitioners.

12. Petitioners were denied due process, and the Board's Order violates the Administrative Procedure Act (5 U.S.C., Section 1006(c), 1007(b)) because the sanctions imposed by the Board are not based on the findings and conclusions of the Board. Instead, the Board determined to impose serious economic sanctions upon petitioners, and then directed its Opinion Writing Section to make findings and conclusions which would justify the imposition of the sanctions the Board had already determined to impose on petitioners.

13. Petitioners were denied due process and the Board's Order violated the Administrative Procedure Act (5 U.S.C., Section 1006(c)) because the sanctions imposed on petitioners are not supported by or are not in accordance with reliable, probative, or substantial evidence.

14. The Bureau of Enforcement failed to sustain the burden of proving that petitioners violated the Federal Aviation Act, (5 U.S.C., Section 1006(c)).

15. The Board's findings of violations by petitioners are arbitrary and capricious and constitute an abuse of discretion, are not in accordance with law, and are unsupported by substantial evidence on

the record considered as a whole, including conflicting evidence and evidence from which conflicting inferences could and should be drawn.

16. The Board's order is arbitrary, capricious, constitutes an abuse of discretion, is not in accordance with law, is contrary to constitutional rights, power, privilege, immunity, is in excess of statutory jurisdiction, authority and limitation, is short of statutory rights, is without observance of procedure required by law, and is not supported by substantial evidence on the record considered as a whole, including conflicting inferences and evidence from which conflicting inferences could and should be drawn.

17. The Board's order is based on unsubstantial, inadmissible, non-probative and untrustworthy evidence.

The Relief Prayed

Wherefore, petitioners pray that this Court review the order of the Civil Aeronautics Board complained of, and that this Court order:

1. That the Board's order be set aside, or,
2. That the Board's order be remanded to the Board for further proceedings in accordance with law, and for such other and further relief as to the Court may seem just.

KEATINGE AND OLDER,

By /s/ ROLAND E. GINSBURG,

Attorneys for Petitioners.

[Endorsed]: Filed July 21, 1961.

[Title of Court of Appeals and Cause.]

MOTION TO SUBSTITUTE PORTIONS OF
THE RECORD IN TYPEWRITTEN OR
MIMEOGRAPHED FORM

Pursuant to the provisions of Rule 37 of the Rules of this Court, Petitioners hereby file their motion to substitute portions of the printed record in typewritten or mimeographed form and in support thereof allege as follows:

1. Petitioners filed a petition with this Court to review an order¹ of the Respondent, the Civil Aeronautics Board, under the provisions of 49 U.S.C., Section 1486.

2. Petitioners filed their statement of points with this Court on or about July 21, 1961. Petitioners will file their designation of record with this Court on November 10, 1961.

3. Petitioners desire to reduce the expense for printing the portions of the record designated by Petitioners. For this reason, Petitioners request authorization from this Court to file certain designated portions of the record in typewritten or mimeographed form. Petitioners have received from the Board copies of a large number of documents which Petitioners have included in the designation of record. These documents, and the number of pages contained in each such document are as follows:

¹Order No. E-16331, issued February 1, 1961. A copy of this Order is attached to the Petition for Review as Exhibit "A."

Document	Number of Pages
Petition for Enforcement, June 15, 1959	1
Complaint of Compliance Attorney, June 15, 1959	5
Motion to Dismiss Complaint, July 20, 1959	8
Answer of M&R Investment Co., Inc. July 20, 1959	6
Initial Decision of Hearing Examiner, July 27, 1960	38
Exceptions of Respondents to Initial Decision, September 19, 1960	19
Board's Opinion and Order E-16331, February 1, 1961	10
Petition for Rehearing and Reconsideration, Feb- ruary 27, 1961	6
Motion for Stay of Board Order E-16331, March 21, 1961	9
Board Order E-16541, March 22, 1961	3
Total	105

Petitioners estimate that a saving of approximately \$350.00 in printing expenses will be realized if this motion is granted.

For the foregoing reasons, Petitioners respectfully request that the following order be issued:

(a) Petitioners be permitted to submit portions of the record in typewritten or mimeographed form, subject to approval by the Clerk of this Court, pursuant to Rule 10(4) of the Rules of this Court.

(b) That this Court make such other and further order as this Court, or a Judge thereof, may deem proper.

Dated, this 9th day of November, 1961.

Respectfully submitted,

KEATINGE AND OLDER,

By /s/ ROLAND E. GINSBURG,
Attorneys for Petitioners.

So Ordered: November 10, 1961.

Subject to reconsideration if any objection filed within 7 days.

/s/ RICHARD H. CHAMBERS,
Judge.

[Endorsed]: Filed November 10, 1961.